

(27,949)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 592.

JOHN S. KENDALL, ADMINISTRATOR OF THE ESTATE OF  
GEORGE REDEAGLE, DECEASED, ET AL., APPELLANTS,

vs.

PAUL A. EWERT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

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a      Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1919, of said Court, before the Honorable Walter H. Sanborn and the Honorable Kimbrough Stone, Circuit Judges.

Attest:

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,  
*Clerk of the United States Circuit Court of  
Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the twentieth day of November, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein John S. Kendall, as Administrator of the Estate of George Redeagle, deceased, et al., were Appellants, and Paul A. Ewert was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:



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**A** (Citation and Affidavit of Service.)

United States of America, to Paul A. Ewert—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's Office of the United States District Court for the Eastern District of the State of Oklahoma, wherein George Redeagle is plaintiff and you are defendant, to show cause, if any there be, why the decree rendered against the said plaintiff as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Ralph E. Campbell, Judge of the District Court of the United States, for the Eastern District of the State of Oklahoma, this 21st day of August, A. D. 1918.

**RALPH E. CAMPBELL,**  
Judge of the District Court of  
The United States for the Eastern District of the State of Oklahoma.

**B** State of Missouri,  
County of Jasper—ss.

Lea Pace, of lawful age, being duly sworn, upon her oath states that she is a stenographer and employed in the office of Hiram W. Currey; that on the 29th day of August, 1918, she delivered to Paul A. Ewert, named in the foregoing writ, a true copy of the same at his office in the City of Joplin, Jasper County, Missouri; that before delivering the said copy the said Paul A. Ewert and the said Lea Pace compared the said copy with the original and found the same to be a true and correct copy.

**LEA PACE,**

Subscribed and sworn to before me this 29th day of August, 1918.

(Notarial Seal)

VIRGINIA A. DAVIS.

My commission expires March 1, 1922,

1

Petition.

In the District Court of the United States for the Eastern District of Oklahoma.

George Redeagle, Plaintiff,

No. . . . . vs.

Paul A. Ewert, Defendant.

Plaintiff, for cause of action against the defendant, states:

I.

That the plaintiff, George Redeagle, is a full-blood Indian of the Quapaw Tribe, and resides and has his home in Ottawa county, Oklahoma; that the defendant, Paul A. Ewert, is a citizen of the State of Missouri, and resides in the City of Joplin, Jasper County, Missouri; and that this suit involves a construction of the Acts of Congress restricting the rights of Quapaw Indians from alienating lands severally allotted to Quapaw Indians, and the Acts of Congress enacted for the protection of Indians.

II.

Plaintiff avers that the Government of the United States, by its officers and agents, acting under the authority of the Acts of Congress, allotted to Huldah Quapaw White, a Quapaw Indian, the Southeast Quarter and the Southeast Quarter of the Southwest Quarter of Section twenty-one (21), Township Twenty-Nine (29) North, Range twenty-three (23) East, in Ottawa county, Oklahoma, as the lawful share and allotment of the land of the United States, to said Indian; and, afterwards, on the 26th day of September, 1896, the United States, by its deed of patent, conveyed said land to said Huldah Quapaw White; that the said Huldah Quapaw White accepted said patent and took possession and enjoyment of the said land; that the said Huldah Quapaw White, while in the possession of said land, deceased, leaving the plaintiff, George Redeagle, as one of [—] heirs at law; that by a decree in partition, a part of said land, to-wit: The East Half of the Southeast Quarter, and the East Half of the Southwest Quarter of the Southeast Quarter of said Section twenty-one (21), Township twenty-nine (29) North, Range twenty-

three (23) East of the Indian Meridian, Ottawa county, Oklahoma, was set apart to the plaintiff, George Redeagle, and thereupon the plaintiff, as the heir at law of the said Huldah Quapaw White, deceased, and by virtue of the said decree of partition became the owner and holder of the said East Half of the Southeast Quarter, and the East Half of the Southwest Quarter of the Southeast Quarter of Section twenty-one (21), Township twenty-nine (29), North, Range twenty-three (23) East, subject to the restrictions of the laws of the United States, with the power to alienate the same, under the order and rules promulgated by the Secretary of the Interior.

### III.

Plaintiff states that the defendant, Paul A. Ewert, was, on the 10th day of March, 1909, and for a long time prior and subsequent thereto, by commission duly issued under the laws of the United States, a Special Assistant Attorney General of the United States, and specially directed and commissioned by the Honorable George Wickersham, then Attorney General of the United States, to act as such Special Assistant Attorney General, in and for the Quapaw Agency of the State of Oklahoma, and to enforce and require due observance by all white persons having dealings with Quapaw Indians, of the Acts of Congress enacted for their—said Quapaw Indians'—benefit; and that it was the special official duty of the said Special Assistant Attorney General to protect any allottee or the heirs of any allottee, holding allotted and restricted lands, in the holding and disposition of their said lands and to protect, enforce and compel due obedience to and observance of the guardianship of the Government of the United States over Quapaw [Indisn]; That the said Paul A. Ewert, as such Special Assistant Attorney General of the United States kept an office in the City of Miami for a long time prior and subsequent to the said 10th day of March, 1910; That the said Paul A. Ewert, with great pains caused it to be circulated among the Quapaw Indians that he was such Special Attorney General to Attorney General Wickersham, and that he was charged with the duties and obligations of protecting the rights of the Indians under tutelage and guardianship of the [Goernment] of the United States, and that he would compel strict observance of the rights of said Indians to the end that no unfair advantage should be taken of them, or any thereof, by white men dealing with them in and for their lands; That the said Paul A. Ewert caused to be circulated among the Indians the fact that he required a great many white men to yield up and cancel farm and mining leases held

on Indian lands, and that he was keeping special watch and observation over all dealings for land with said Indians, and assumed the position of Attorney for all Quapaw Indians in all matters relating to their allotted lands; That this plain-

4      tiff, George Redeagle, had been informed of all these claims of authority by the said Paul A. Ewert, and of the position which the said Paul A. Ewert occupied as a Special Assistant Attorney General of the United States, and of his power and authority, and by reason of said facts the said Paul A. Ewert acquired great influence over the Quapaw Indians in Ottawa county, Oklahoma, and particularly over the plaintiff herein, George Redeagle.

Plaintiff avers that in the year 1909 he became involved in difficulties, and was in great need of money with which to extricate himself; that the defendant, Paul A. Ewert, was well aware of the plaintiff's wants and of his extremities and that the plaintiff desired to raise cash to be used in extricating himself from his difficulties, and being so aware of plaintiff's situation entered into a contract and agreement with one Franklin M. Smith, whereby it was agreed that the said Franklin M. Smith should purchase the plaintiff's aforesaid land and obtain deed thereto and that he—the said Paul A. Ewert—would furnish the money to pay for said land; That while the plaintiff was so situate, the said Franklin M. Smith offered to purchase the said land from the plaintiff and offered the plaintiff the sum of Thirteen Hundred Dollars (\$1300.00) for his said land, assuring the plaintiff that said Thirteen Hundred Dollars was the reasonable and fair price and valuation of the plaintiff's said land, and informed plaintiff that he could sell his said land under the supervision and direction of the Secretary of the Interior; That the plaintiff, not knowing that said Paul A. Ewert was in fact purchasing the said land, or causing the same to be purchased by the said Franklin M. Smith for his—the said Paul A. Ewert's—

5      special use and benefit, entered into an agreement with the said Franklin M. Smith to sell him the land for the sum of Thirteen Hundred Dollars and the plaintiff, so agreeing with the said Smith, executed a deed to said land to the said Smith; That the said deed was duly approved and the said transaction duly sanctioned by the Secretary of the Department of the Interior and said deed was delivered to the said Franklin M. Smith, and is recorded in the City of Washington, District of Columbia, in "Inherited Indian Lands Book 21, page 159", and was also filed for record in Ottawa county, Oklahoma, and recorded on June 8, 1909, in Book 9, page 172, a true copy of said deed being hereto attached,

marked Exhibit A, and made a part hereof, and that the said Franklin M. Smith took possession of the said land and pretended to be owner of the same; That in truth and in fact said Franklin M. Smith was the agent of the said Paul A. Ewert and held the land for the said Paul A. Ewert, and that pursuant to an agreement entered into some time prior to the 10th day of March, 1910, between the said Paul A. Ewert and the said Franklin M. Smith, the said Franklin M. Smith and his wife, Margaret E. Smith, joining therein, on the 23d day of April, 1910, conveyed the said land by deed to the said Paul A. Ewert, and which said deed was filed for record with the Recorder of Deeds of Ottawa County, State of Oklahoma on the 14th day of June, 1911, and is recorded in Book 30, page 52, of the Deed Records of Ottawa county, Oklahoma, a true copy of said deed being hereto attached, marked Exhibit B, and made a part hereof; and that since said date, said Paul A. Ewert has been, and now it, in the possession and enjoyment of said land; That the said deed of conveyance from the said Franklin M. Smith to the said Paul A. Ewert recites a

6 consideration of Two Thousand Dollars, and recites that such consideration was paid to the said Franklin M. Smith, when in truth and in fact no consideration whatever was paid but the said Franklin M. Smith deeded said land to the said Paul A. Ewert pursuant to a contract so as aforesaid entered into between the said Franklin M. Smith and Paul A. Ewert prior to the 10th day of March, 1910, and while the defendant, Paul A. Ewert, was so, as aforesaid, charged with the duties and responsibilities of guarding and protecting the interests of the plaintiff under and by virtue of his office of Special Assistant Attorney General of the United States, under his special instruction and commission from the aforesaid Attorney General of the United States.

Plaintiff avers that he would not have sold his said lands to Franklin M. Smith if he had known that said Paul A. Ewert was in fact the purchaser thereof, and that he but recently discovered that the defendant was in fact the purchaser from this plaintiff, and that Franklin M. Smith bought said lands for said Paul A. Ewert.

Plaintiff avers that it is the policy of the Government of the United States to discourage the alienation by Quapaw Indians of their allotted lands, and not to permit any sale of the lands allotted by Indians except when the necessity of the Indian holder demands such sale, and when it is for the best interest of such Indians, and then only for the fair and reasonable market value of such allotments, and to that end the Acts of

Congress forbid any sale of allotted lands by Quapaw Indians except under the supervision and care of the Secretary of the Interior, and that it was the duty of the said Paul A. Ewert, as the Special Assistant Attorney General of the United States, to respect, uphold and enforce such policy and that by reason of such policy and such Acts of Congress and by reason of the aforesaid official position of the said Paul A. Ewert, he was wholly disabled from acquiring the title to the plaintiff's land by such purchase, directly or indirectly, and that by the purchase aforesaid and the taking possession of said land the said Paul A. Ewert, by his own wrong, became the holder of said land in trust for this plaintiff.

Plaintiff avers that the purchase price of said land, to-wit, the sum of Thirteen Hundred Dollars, was paid to the Indian Agent, and that said Indian Agent held said moneys for this plaintiff, and paid some to him from time to time under his supervisory power over said Quapaw Indians.

Plaintiff states that said land, at the time of said purchase, as said Ewert well [know] was of the reasonable value of Twenty Six Hundred Dollars; That said land is now of the reasonable value of Seventy-Five Hundred Dollars (\$7500.00); that it was the duty of the defendant to inform the plaintiff that he was in fact the purchaser of said land, and instruct the plaintiff as to the real value of said land and of the reasonable prospective value of the same; That the defendant's secret purchase of plaintiff's said land by and through the said Smith, was a breach of said defendant's fiduciary relation to this plaintiff and a violation of his obligation and duties as Special Assistant Attorney General of the United States to respect and enforce the guardianship of the Government of the United States over Quapaw Indians, and particularly this plaintiff, and in equity and good conscience defendant has no right to enjoy the benefits of ownership of said land; that the fair rental value of said land is and was during all of the time said land was occupied by said defendant, Two Hundred Dollars per annum.

Plaintiff avers that on the 14th day of July, 1913, the said Paul A. Ewert mortgaged the land so as aforesaid acquired from this plaintiff, to the Deming Investment Company to secure the payment of Seventeen Hundred and Fifty Dollars (\$1750.00) and the said Deming Investment Company paid to the said Paul A. Ewert the said sum of Seventeen Hundred and Fifty Dollars as consideration for the said mort-



gage; that said Deming Investment Company assigned the said mortgage and the note secured thereby to the Passumpsic Savings Bank, and said Passumpsic Savings Bank, is the owner and holder in good faith and for value of the said mortgage and note, and the same constitutes a mortgage lien upon the plaintiff's aforesaid land for the sum of Seventeen Hundred and Fifty Dollars;

Wherefore, premises considered, plaintiff prays the Court to adjudge and decree that the defendant holds the title to said land so as aforesaid conveyed to him by the said Franklin M. Smith, in trust for the use and benefit of the plaintiff; That the defendant be required to account to the plaintiff for the sum of Seventeen Hundred and Fifty Dollars received by him upon the mortgage of said land, and for the rental value of said land at Two Hundred Dollars per annum, and that the plaintiff have such other and further general relief as he may be entitled to under the rules and principles of equity and as the Court may deem right and just; and the plaintiff now offers to comply with such orders and decrees as the Court may impose upon him, or may adjudge to be right and just, as a condition for the remedy herein prayed for.

A. SCOTT THOMPSON,  
H. W. CUREY,  
Attorneys for Plaintiff.

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(Exhibit A.)

Indian Deed.

George Redeagle-et-us.

to

Franklin M. Smith.

This Indenture, Made and entered into this 10th day of March One-Thousand Nine Hundred and Nine by and between George Redeagle, and his wife, Minnie Redeagle, of Quapaw Agency, Ottawa County, State of Oklahoma, heirs of Huldah Quapaw White, deceased, a Quapaw Indian, party of the first part, and Franklin M. Smith of Miami, Oklahoma, party of the second part,

Witnesseth, That said parties of the first part, for and in consideration of the sum of Thirteen-Hundred and No/100 (\$1300.00) Dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto

said party of the second part the following described real estate and premises situated in Ottawa County, State of Oklahoma, to-wit:

The East-Half of the Southeast Quarter, and the East-Half of the South-West Quarter of the South-East Quarter of Section Twenty-One, Township Twenty-Nine, North, of Range Twenty-Three East, of Indian Meridian, containing in all 100 acres, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To Have And To Hold said described premises unto the said party of the second part, his heirs, executors, administrators and assigns, forever.

In witness Whereof, The Said parties of the first part have hereunto set their hands and seals the day and year first above written.

GEORGE REDEAGLE (Seal)  
MINNIE REDEAGLE (Seal)

Witnesses:

B. N. O. Walker,  
Wm. D. Hodgkiss.

State of Oklahoma,  
County of Ottawa—ss.

Be It Remembered, That on this 10th day of March, A. D. 1909, before the undersigned, a ..... in and for the County and ..... aforesaid, personally appeared before George Redeagle, and Minnie Redeagle, his wife, heirs of Huldah Quapaw White, deceased, to me personally known to be the identical persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial seal on the day and year last above written.

(Seal)

C. B. COE.

My Commission expires Feb-28th-1912.

Acknowledgment of United States Indian Agent, or  
Superintendent.

Be It Remembered, That on this 10th day of March, 1909, before the undersigned, Superintendent & Special Distribut-

ing Agent for the Quapaw Agency, Oklahoma, personally appeared George Redeagle and Minnie Redeagle, his wife, to me personally known to be the identical persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

I further certify that the contents, purpose, and effect of the Deed of conveyance were explained to and fully understood by the grantors.

In Testimony whereof, I have hereunto subscribed my name, officially, on the date last above written.

IRA C. DEEVER,  
Supt. & Spcl. Disb. Agt., Quapaw  
Indian Agency, Oklahoma.

10 Department of the Interior: Office of Indian Affairs.

Apr. 29-1909.

The within Deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved.

R. G. VALENTINE,  
Acting Commissioner.

Department of the Interior,

Apr. 30-1909.

The Within Deed is hereby Approved.

FRANK PIERCE,  
First Assistant Secretary.

Office of Indian Affairs, Land Division,

May 18-1909.

Recorded in Deed Book Inherited Indian Lands, Vol-21-  
Page 159—

Filed for record 6-8-09, 1 P. M. fee \$2.00

Mailed to Grantee City 6-8-09

C. G. JAMES,  
Reg. Deeds.

Recorded in Book 9, page 72, Ottawa county, Oklahoma.

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## (Exhibit B.)

## Quit-Claim Deed.

This Indenture, Made this 23rd day of April, in the year A. D. 1910, between Franklin M. Smith and Margaret E. Smith, his wife, parties of the first part, and Paul A. Ewert party of the second part.

Witnesseth, That the said parties of the first part, in consideration of the sum of Two Thousand (\$2,000.00) Dollars, to them duly paid, the receipt whereof is hereby acknowledged, do hereby quit-claim, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all their right, title, interest and estate, both at law and in equity, of, in and to the following described real estate situated in the County of Ottawa and State of Oklahoma, to-wit:

The East one-half of the South-east one-fourth and the East one-half of the South-west one-fourth of the South-east one-fourth of Section Twenty-one (21) Township twenty-nine (29), North of Range Twenty-three (23) East of the Indian Meridian, Quapaw Reserve, Ottawa County, Oklahoma, being a portion of the allotment of Huldah Quapaw White;

together with all and singular the hereditaments and appurtenances thereto belonging. To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof, The said parties of the first part have hereunto set their hands the day and year first above written.

FRANKLIN M. SMITH,  
MARGARET E. SMITH,

Signed, sealed and delivered in the presence of:

State of Oklahoma,  
County of Ottawa—ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this 9th day of May, 1910, personally appeared Franklin M. Smith and Margaret E. Smith, his wife to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they

executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year above  
set forth.

(Seal)

CHAS. A. BECK,  
Notary Public.

My commission expires Apl. 6-1912.

Filed for record 6-14-1911-8-A. M.

Mailed to Grantee, Joplin, 6-14-11.

Recorded in Book 30, Page 52.

LON LAMPKIN,  
Reg. Deeds.

12    Endorsed: Petition, Filed in the U. S. District Court,  
May 19, 1916.

13 (Answer.)

(Filed in the U. S. District Court, October 2, 1916.)

Comes now the defendant in the above entitled action, and for his answer to the complaint filed herein, says:

I.

Defendant admits that the plaintiff, George Redeagle, is a Quapaw Indian and resides at and has his home in Ottawa County, Oklahoma, and alleges that he is between forty and fifty years of age and one of the best educated and most intelligent Indians in the entire tribe, having for many years acted as interpreter for members of the tribe; defendant denies that this suit involves a construction of the Acts of Congress restricting the right of Quapaw Indians from alienating land severally allotted to the Quapaw Indians, and the Acts enacted for the protection of the Indians.

## II.

Defendant neither admits nor denies the allegations contained in Paragraph II of the complaint herein, and puts them upon their proof of the same.

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### III.

Defendant expressly denies the allegation "that the defendant, Paul A. Ewert, was, on the 10th day of March, 1909, and for a long time prior and subsequent thereto, by

commission duly issued under the laws of the United States, a Special Assistant Attorney General of the United States, and specially directed and commissioned by the Honorable George Wickersham, then Attorney General of the United States, to act as such Special Assistant Attorney General, in and for the Quapaw Agency of the State of Oklahoma;" and denies that as such Special Assistant Attorney General in and for the Quapaw Agency of the State of Oklahoma, he was commissioned "to enforce and require due observance by all white persons having dealings with Quapaw Indians, of the Acts of Congress enacted for their—said Quapaw Indians'—benefit; and denies that it was "the special official duty of said Special Assistant Attorney General to protect any allottee or the heirs of any allottee, holding allotted and restricted lands, in the holding and disposition of their said lands and to protect, enforce and compel due obedience to and observance of the guardianship of the Government of the United States over Quapaw Indians;" defendant admits that the said Paul A. Ewert, as Special Assistant to the Attorney General of the United States, kept an office in the city of Miami, Oklahoma, from on or about December 1", 1909, until on or about August 10", 1910; defendant denies the allegation that the defendant "with great pains caused it to be circulated among the Quapaw Indians that he was such Special Assistant Attorney General to Attorney General Wickersham, and that he was charged with the duties and obligations of protecting the rights

15 of the Indians under tutelage and guardianship of the Government of the United States, and that he would compel strict observance of the rights of said Indians to the end that no unfair advantage should be taken of them, or any thereof, by white men dealing with them in and for their said lands; that the said Paul A. Ewert caused to be circulated among the Indians the fact that he required a great many white men to yield up and cancel farm and mining leases held on Indian lands, and that he was keeping special watch and observation over all dealings for land with said Indians, and assumed the position of Attorney for all Quapaw Indians in all matters relating to their allotted lands;" and defendant denies that the said "George Redeagle, had been informed of all these claims of authority by the said Paul A. Ewert, and of the position which the said Paul A. Ewert occupied as a Special Assistant Attorney General of the United States, and of his power and authority," and denies that "by reason of said facts the said Paul A. Ewert acquired great influence over the Quapaw Indians and particularly over the plaintiff, George Redeagle."

Further answering, said defendant shows to the court that all of the allegations contained in said first section of Paragraph III. beginning with the words "and to enforce and require due observance," and ending with the words "George Redeagle," are incompetent, irrelevant and immaterial and redundant and lawfully have no place in this complaint and were inserted therein by counsel for the plaintiff with malicious intent and in the spirit of revenge, because of prosecution brought against the clients of said attorneys and one  
16 of the attorneys himself, to-wit: A. Scott Thompson, and shows to the court that the same should be [stricken] out and that no testimony should be permitted to be offered in support or substantiation of the same.

Further answering said Paragraph III of the complaint herein, defendant states that he is without knowledge as to whether or not "the plaintiff was in the year 1909, involved in great difficulties and was in great need of money with which to extricate himself," and denies "that the defendant, Paul A. Ewert, was aware of the plaintiff's wants and of his extremities," and denies that he knew that the plaintiff "desired to raise cash to be used in extricating himself from his difficulties," and denies that "being so aware of plaintiff's situation he entered into a contract and agreed with one Franklin M. Smith, whereby it was agreed that the said Franklin M. Smith should purchase the plaintiff's aforesaid land and obtain deed thereto and that he—the said Paul A. Ewert—would furnish the money to pay for said land;" and denies that "while the plaintiff was so situate, the said Franklin M. Smith offered to purchase the said land from the plaintiff and offered the plaintiff the sum of Thirteen Hundred Dollars (\$1300.00) for his said land," and defendant denies that the said Franklin M. Smith assured the plaintiff that said Thirteen Hundred Dollars was the reasonable and fair price and valuation of the plaintiff's said land; and denies that the said Franklin S. Smith "informed the plaintiff that he could sell his said land under the supervision and direction of the Secretary of the Interior;" and denies that "the plaintiff, not knowing that Paul A. Ewert was in fact purchasing the said  
17 land, or causing the same to be purchased by the said Franklin M. Smith for his—the said Paul A. Ewert's—special use and benefit, entered into an agreeemnt with the said Franklin M. Smith to sell him the land for the sum of Thirteen Hundred Dollars;" and denies that "the plaintiff so agreeing with the said Smith, executed a deed to said land to the said Smith."



Further answering said allegations, defendant alleges that each and all of said statements herein before denied, contained in every line and sentence and paragraph, are false and fraudulent and untrue, and are made by counsel for the plaintiff wilfully and maliciously and with sinister motives, and in substantiation of this statement, this defendant shows to the court and alleges that these matters are all matters of public record in the office of the Secretary of the Interior of the United States and in the office of Ira C. Deaver, Superintendent of Quapaw Agency at Wyandotte, Oklahoma, in the very County and State wherein this plaintiff and his said Attorneys reside; and defendant alleges and shows to the court that said records and the records in the office of the Attorney General of the United States, show, and the defendant alleges it to be a fact, that the defendant was appointed a Special Assistant to the Attorney General of the United States to assist in the institution and prosecution of suits to set aside deeds made to certain allotments in Quapaw Indian Agency, only; that said records further show that this defendant did not take the oath of office until on or about the 10<sup>th</sup> day of November, 1908; that this defendant did not come to Oklahoma and enter upon the discharge of his duties and open an office in Miami, Oklahoma, until on or about the 1<sup>st</sup> day of December, 1908; and that

18 the said plaintiff, George Redeagle, months before the appointment of this defendant as Special Assistant to the Attorney General of the United States, with duties as aforesaid, and months before the defendant ever knew or heard of George Redeagle, or any Quapaw Land, or dreamed of being commissioned to institute suits against the grafter of Oklahoma, made and prepared his petition and filed the same with the Secretary of the Interior of the United States, to-wit: On the 26<sup>th</sup> day of September 1908, and that in accordance therewith, the said lands were first publicly advertised and offered for sale by large posters and in the newspapers, under that portion of the Act of Congress approved May 27, 1902, (32 Stats., 245-275), providing for the sale of inherited Indian Lands, and under the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, during the months of September, October and November, 1908, and that at such times no one bid for said lands, and at the request of the said George Redeagle, as provided by the rules and regulations, said lands were again advertised for sale by large posters circulated for a further period of thirty days; and when bids were again opened on the 21<sup>st</sup> day of December, 1908, there were no bids for said lands; and that in like manner, at the request of the said George Redeagle, the

said lands were again publicly offered for sale and advertised as provided by the said Act of Congress and the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, until the 22 day of February, 1909, when this defendant made his bid in the name of Franklin M. Smith, with the consent of the said Franklin M. Smith, bidding against all persons who might desire to bid thereon, and bidding more than the appraised value of the United States, to-wit: the sum of Thirthe Interior of the United States, to-wit: the sum of Thirteen Hundred Dollars (\$1300.), and purchased the same and on the 10<sup>th</sup> day of March, 1909, the plaintiff made and executed to the said Franklin M. Smith his warranty deed for said lands, and later through the Secretary of the Interior of the United States, delivered said deed to the said Franklin M. Smith; defendant further alleges that said deed, before delivery to the said Franklin M. Smith, was, in accordance with the said Act of Congress, supra, and the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, transmitted by the said Ira C. Deaver, as Superintendent and Special Disbursing Agent of Quapaw Agency, to the Secretary of the Interior of the United States, together with the said petition and appraisalment and all papers and reports required by said rules and regulations; and that the Commissioner of Indian Affairs of the United States, who is commissioned with the particular duty of handling these matters, thereafter, to-wit: On the 29<sup>th</sup> day of April, 1909, passed upon all of said acts and approved the same and submitted said deed to the Secretary of the Interior of the United States with the recommendation that it be approved; that thereafter, to-wit: On the 30<sup>th</sup> day of April, 1909, the said Secretary of the Interior of the United States, in due form of law, approved the said deed, a copy of which deed, marked Exhibit "A" is hereunto attached and made a part of this answer.

Defendant alleges that said deed was thereafter returned to the said Ira C. Deaver, Superintendent and Special Disbursing Agent, Quapaw Agency, and by him in behalf of this plaintiff, George Redeagle, delivered to the said Franklin M. Smith.

Defendant admits that he was in truth and in fact the real purchaser of the said land at said sale and bid upon said land in the name of the said Franklin M. Smith as his agent; and defendant alleges that at no time after the purchase of the said land, did he in any manner deny or conceal the fact that he was the real purchaser of the land, and such fact was a matter of

common knowledge in the vicinity of Miami, Oklahoma, at all times after the delivery of said deed, and was then known to the said George Redeagle; and the matter of the said purchase of the said land by the said defendant, Paul A. Ewert, in the name of Franklin M. Smith, was, on or about the date of its approval, made known to the Commissioner of Indian Affairs of the United States, and to the Secretary of the Interior of the United States, and to the Attorney General of the United States, in connection with the further fact that the said Paul A. Ewert had, at about the same time, purchased in his own name, certain other lands belonging to the [heits] of Charles Bluejacket, deceased; and the said Commissioner of Indian Affairs of the United States, and the said Secretary of the Interior of the United States, and the said Attorney General of the United States, after a thorough investigation of all of the facts, held that there was no

21 legal or ethical reason why the said defendant should not purchase Indian lands at said public sales when they were publicly advertised and offered for sale and the bids of said defendant made in accordance with the rules and regulations, against all other bidders, wherever situated, who might desire to purchase said lands.

Further answering the complaint herein, defendant denies the allegation that the "plaintiff would not have sold his said lands to Franklin M. Smith if he had known that the said Paul A. Ewert was in fact the purchaser thereof," and denies the allegation that "he but recently discovered that the defendant was in fact the purchaser from the plaintiff and that Franklin M. Smith bought the said land for the said Paul A. Ewert;" and defendant alleges that he knows of his own personal knowledge that the plaintiff was advised of, and learned and knew of the fact that the said Paul A. Ewert was in truth and in fact the purchaser, shortly after the said deed was delivered, if not before the delivery of the same.

#### IV.

Further answering the complaint herein, the defendant shows to the court and alleges that the said George Redeagle is only nominally the plaintiff in this suit; that he did not request the attorneys for the plaintiff to institute said suit for him, but was solicited and importuned by the attorneys signing themselves as attorneys for the plaintiff, and by certain of their clients, with their knowledge and consent, against

22 whom the defendant in his official capacity had instituted suits and compelled restitution of unlawfully ac-

quired Indian properties; and defendant alleges that the said attorneys and their said clients sent their automobile in the country to the home of the plaintiff, a distance of fifteen miles, and brought said plaintiff in to Miami, Oklahoma, to the office of the said attorneys, and importuned him to permit them to institute the suit, and agreed to institute it upon a contingent fee, all in conformity with the scheme and devise and plan of the said attorneys and their said clients to intimidate the defendant and deter him from bringing further suits against their said clients, and against the said A. Scott Thompson, and otherwise "meddling in their affairs" and deals with the Indians of Quapaw Agency; and defendant further shows to the court that the conduct of these said attorneys in falsely and fraudulently alleging in the complaint and trying to make it appear to the court and to the public that this defendant, through his agent, Franklin M. Smith, influenced the said George Redeagle at a time when "he was involved in personal and financial difficulties and in great need of money to extricate himself," to sell his land for an inadequate sum, in the manner and method alleged in the complaint, is an act of perfidy, and personal demeaning, and professional dishonor, which even ignorance cannot excuse and courts cannot overlook in attorneys, who under oath and upon personal honor have declared as a condition precedent to their rights to practice law in the courts of the country, that they will employ for the means of maintaining causes confided to them "such means only as are consistent with truth, and never seek to mis-

23 lead the Judges by any artifice or false statements of fact or law," and "not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interests," and "to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged."

Defendant, further answering, denies that he, through the said Franklin M. Smith, after the execution and delivery of said deed, entered into the possession and enjoyment of the said lands, but alleges the fact to be that he did not enter into possession of them until the summer of 1911, by reason of the fact that said lands at the time of the purchase through the Secretary of the Interior of the United States, were covered by leases and were leased for the sum of Fifty Cents (.50¢) per acre until the summer of 1911; and the defendant, under

the rules and regulations governing the purchase of said land, bought the same subject to said leases; and defendant denies that the said lands were worth at the time of their purchase, in excess of the sum of Thirteen Hundred Dollars (\$1300.); and denies that the fair rental value of said land was during all of the time occupied by the defendant, of the value of Two Hundred Dollars (\$200.) per annum, or of any greater value than One Hundred Dollars (\$100.) per annum; and further shows to this court that it is immaterial what the value of the land now is, and asks the court not to recieve any testimony upon that point, upon the ground that it is incompetent, irrelevant, immaterial and redundant; but defendant does deny

24 that said land is now of the reasonable value of Seventy-five Hundred Dollars (\$7500.); and defendant denies that it was his duty to advise the plaintiff at the time of the purchase of the said land, that it was worth more than Thirteen Hundred Dollars (\$1300.) because in truth and in fact, it was not worth more than Thirteen Hundred Dollars, and because in truth and in fact, it was not the duty of the defendant to advise in any respect with the plaintiff concerning the value of said land, and defendant did not do so; and defendant denies that he was wholly disabled from acquiring the title to said land by said purchase, but alleges that he could do so lawfully and could lawfully make the purchase in the manner that it was made, and that the Secretary of the Interior of the United States, and the Commissioner of Indian Affairs of the United States, and the Attorney General of the United States, did hold that the defendant had a right to purchase Indian Lands at public sale under and pursuant to the laws of the United States and the rules and regulations promulgated thereunder by the Secretary of the Interior for the sale of inherited Indian Lands; and defendant denies that it is the policy of the Government of the United States to discourage the alienation by Quapaw Indians of their allotted lands and not permit any sale of the lands allotted by Indians, except when the necessity of the Indian holder demands such sales, and when it is for the best interests of such Indians; and alleges and shows to the court that the said Act of Congress of 1902, under which said lands were sold, was enacted for the special benefit of the Indian in order to permit him to sell his inherited

25 Indian Lands, and he has an absolute right, under the said Act, to sell his land under such rules and regulations as the Secretary of the Interior may impose; defendant admits that the said Act of Congress forbids the sale of any allotted lands by Quapaw Indians, except under the supervision and care and control of the Secretary of the In-

terior, and shows to the court that said sale was in all manners and in every particular, made under the Act of Congress and under and pursuant to the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, and defendant further denies that his purchase of the said land in the manner and method in which it was purchased, was after any manner or fashion, in violation of his obligation and duty as Special Assistant to the Attorney General of the United States under he terms of his employment as hereinafter set forth in defendant's letter of appointment by the Attorney General under date of October 23, 1908.

## V.

Further answering the complainant herein, defendant shows to this court that during the times mentioned in the complaint he was in no wise, or after any manner of fashion, officially connected with, or in the employ of the Department of the Interior of the United States; that as a practicing Attorney-at-law, he was specially employed by the Attorney General of the United States in only one respect, to-wit: To institute and prosecute certain suits to set aside certain deeds commonly known as Marshal's Deeds, which had theretofore been unlawfully made of the United States Marshal under the direction of the Federal Court, unlawfully conveying the interests of heirs of deceased allottees in and to certain allotted lands located in Quapaw Indian Agency, and not otherwise, all as more fully appears by the letter of appointment under which the said defendant, Paul A. Ewert, was employed as Special Attorney of the Department of Justice, a copy of which said letter of employment, signed by Charles J. Bonaparte, Attorney General of the United States, is as follows:

“Department of Justice

Washington, D. C.,

October 23, 1908.

Paul A. Ewart, Esq.

Pipestone, Minnesota.

Sir:

You are hereby appointed a Special Assistant to the Attorney General to assist in the institution and prosecution of suits to set aside deeds made to certain allotments in the Quapaw Indian Agency.



Your compensation will be at the rate of ..... per month, commencing when you enter upon duty, at which time you should execute and forward the necessary oath of office.

Your official residence is fixed at Miami, Oklahoma, and when absent from that place on official business you will be allowed your actual necessary expenses of lodging and subsistence, and your actual traveling expenses, as provided by the Department's orders dated September 1, 1907, a copy of which is herewith inclosed.

This appointment is subject to any change which may be made by this Department.

Respectfully,

(Signed) CHARLES J. BONAPARTE,  
Attorney General."

Further answering, said defendant [sais] that under the terms of said employment, and not otherwise, he took the oath of office on or about November 10, 1908; that he continued his said employment under the terms of said  
27 appointment, and not otherwise, during the times mentioned in the complaint herein. That during the times mentioned in said complaint, when said land was purchased, his employment consisted solely of instituting suits to set aside certain deeds, and no other litigation of any kind was instituted by him during that period.

## VI.

Defendant, for further answer to the complaint herein, alleges and shows to the court:

That the lands in controversy herein were allotted to Huldaw Quapaw White, an Indian of the Quapaw Tribe, under and pursuant to the Act of Congress approved March 2, 1895, being a part of the Indian Appropriation Act for the year 1895, (28 Stat. at Large 927), providing for the allotment in severalty of the lands theretofore set apart for the use of the Quapaw Tribe or band of Indians, situated in Ottawa County, Oklahoma, and an allotment patent issued to her under and pursuant to the terms of said Act on the 26<sup>th</sup> day of February, 1896; that the plaintiff acquired his interest in the land in the manner and after the fashion set forth in the complaint herein; that in the latter part of the month of August, 1908, or the first part of the month of September, 1908, said plaintiff, George Redeagle, in the manner provided by law,



prepared, and on the 26<sup>th</sup> day of September, 1908, filed with Ira C. Deaver, Superintendent and Special Disbursing Agent of Quapaw Agency, at Wyandotte, Oklahoma, as the duly commissioned representative of the Secretary of the Interior, his said petition wherein and whereby he in all things duly petitioned the Secretary of the Interior of the United States to sell said lands under and pursuant to the laws of the United States applicable to the sale of inherited Indian Lands, to-wit: The Act of May 27, 1902 (32 Stats., 245-275) and the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, agreeing in said petition to be governed by the rules and regulations of the said Secretary of the Interior governing the same of such lands and the control of the proceeds derived from said sale.

That upon filing the said petition asking for the said sale the said Ira C. Deaver, Superintendent and Special Disbursing Agent, and his appraisement official in charge, did visit and view said lands and examine and appraise the same at and for its true value according to their best judgment and in accordance with the rules and regulations promulgated by the Secretary of the Interior of the United States, and did make a certificate of appraisement and sign the same and sealed the said appraisement and did not make the same public and did not open the same until the date of the sale, and did not before or after said sale make the same public, all of which occurred months before the defendant was ever appointed Special Attorney to prosecute said land suits in Oklahoma and before the said defendant had ever heard of the Quapaw Indians or knew of their allotted lands, or knew that there was such an Indian allottee as George Redeagle, this plaintiff.

That thereupon, the said lands were duly advertised for sale by the Secretary of the Interior of the United States, as provided by law, and said lands with other lands, were publicly offered for sale by large published advertisements in the newspapers and by large posters, such as are commonly used by the Department of the Interior in the advertising of the sale of its Indian Lands, and by the mailing of said posters to possible purchasers and interested persons, until the date of the first sale, and which said first sale was had on the 14<sup>th</sup> day of December, 1908, when the bids were advertised to be opened; that on said date there were no bids for said land.

That thereafter, upon the further petition of the said plaintiff and in the manner provided by law, the said lands were a second time, in like manner listed and advertised to be sold on the 25<sup>th</sup> day of January, 1909, at which time there were no bids of any kind received from any person for the said land.

That, thereafter, in like manner, upon the further petition of the said plaintiff, the said lands were for a third time listed for sale and advertised to be sold on the 22<sup>nd</sup> day of February, 1909, by the Secretary of the Interior of the United States under and pursuant to the Act of Congress and the laws of the United States and the rules and regulations promulgated thereunder by the Secretary of the Interior, at which time this defendant bid upon said lands against the public and all of the public, offering for the same the sum of Thirteen Hundred Dollars (\$1300.), which bid was found by the said Superintendent of Quapaw Agency to be above the appraised value of the said land and was accepted by the said Superintendent and the Secretary of the Interior of the

30 United States, and was accepted by this plaintiff with full knowledge of all of the facts of defendant's employment.

That thereafter, to-wit: On the 10<sup>th</sup> day of March, 1909, the said plaintiff made and executed in due form of law, his warranty deed to the said Franklin M. Smith, as agent for this defendant, wherein and whereby he conveyed to the said Franklin M. Smith, as agent for said defendant, the lands mentioned in the complaint; that thereafter, the said deed, together with the petition for said sale and all other papers required to be transmitted by the rules and regulations of the Honorable Secretary of the Interior governing said sale, was transmitted to the Honorable Secretary of the Interior of the United States and received by him; and the said deed was on the 29<sup>th</sup> day of April, 1909, submitted to the Secretary of the Interior of the United States, by the commissioner of Indian Affairs, in charge of Indian Affairs in the United States, and by him on said date recommended for approval; that thereafter, to-wit: On the 30<sup>th</sup> day of April, 1909, the Honorable Secretary of the Interior of the United States approved the said deed in due form of law, a copy of which said deed together with all of the endorsements of approval, is hereunto attached, marked Exhibit "A" and made a part of this answer.

That thereafter, the said deed was, by request of the plaintiff herein made to Ira C. Deaver, Superintendent, delivered to the

said Franklin M. Smith for and on behalf of said defendant and the full purchase price therefor paid to the Secretary of the Interior of the United States, to be disbursed by him to the said plaintiff in accordance with the rules and regulations of the Secretary of the Interior of the United States theretofore agreed upon between the said Secretary of  
31 the Interior and the said plaintiff.

That thereafter, the said Franklin M. Smith by deed of warranty, conveyed the same in accordance with his agreement with the defendant, to the defendant.

Defendant further shows to the courts that in all of his conduct herein and the purchase of said land, he acted in the utmost good faith, believing that he had a lawful right to bid upon the said land at such public sale, as against all other bidders who might desire to purchase the same, either in his own name directly, or in the name of some other person in his behalf, as to him might seem expedient and fit; defendant states that on or about the time of the approval of said deed and the delivery of the same to Franklin M. Smith for this defendant, the Commissioner of Indian Affairs of the United States, and the Secretary of the Interior of the United States, and the Attorney General of the United States, held in the matter of the purchase of certain other inherited Indian Lands in Quapaw Agency under similar circumstances to-wit: The lands of Charles Bluejacket, deceased, but in the name of himself, the said Paul A. Ewert, defendant, that he the said Paul A. Ewert, was within his legal rights and that there was nothing ethically wrong in him purchasing Indian Lands when the same were publicly advertised and publicly offered for sale under the rules and regulations of the Secretary of the Interior, bidding in the open against all other persons and for a larger sum of money than was offered by such persons and more than the appraised value of the said land; and defendant denies the allegation of the complaint herein, that the conduct of the said defendant  
in the purchase of the said land as hereinbefore named,  
32 was a breach of his fiduciary relations with the plaintiff, or a violation of his duties as Special Assistant to the Attorney General of the United States, under the terms of his employment; and further shows that by reason of his said purchase, the defendant had a good and perfect right to enjoy the benefits of the ownership of the said lands.

Defendant states that he did not enter into the possession of said lands until the latter part of the year 1911, by reason

of the fact that the said lands had theretofore been leased by the said plaintiff to other persons for said time and the rental thereof collected in advance; that between the said time of acquiring said lands and the filing of the complaint herein, the defendant expended One Thousand Dollars (\$1,000) in the form of permanent improvements upon said land by the erection thereon of necessary buildings, to-wit: A house, a barn, a granary, a chicken coop, and other out-buildings, and expended an additional Three Hundred Dollars (\$300.) in the sinking of a well and the casing of the same, so that the necessary water might be provided for use on the said premises; and defendant further shows to the court that at the time he purchased the said land the same was wild prairie land and that fully one-third of it was and is rough and untillable and unfit even for the production of hay, by reason of the fact that the said land was so cut up with gullies and ravines and deep ditches and sloughs, so that it could not be plowed, and for the most part, the hay could not be cut therefrom.

And defendant further shows to the court that since the date of acquiring possession of said land he has further improved the same at an expense of One Hundred Fifty Dollars (\$150.) by breaking up said wild land and subduing the soil and making it fit for the raising of crops of all kinds.

Defendant further shows to the court that during the time that he has occupied the said land he has paid to the County of Ottawa, State of Oklahoma, taxes to the amount of Two Hundred Fifty Dollars (\$250.), which taxes were duly and lawfully levied against the said lands and collected of this defendant by the said County of Ottawa, State of Oklahoma.

Defendant further answering, denies that the said lands were, at the time of their purchase by the defendant through his said agent, Franklin M. Smith, of a greater value than the purchase price, to-wit: Thirteen Hundred Dollars (1300.), but shows to the court that the question of the value of the said lands at the time same were purchased by him is not within the issues of this case, because the Secretary of the Interior of the United States appraised the said lands and assessed the valuation thereof, and the defendant asks that no evidence be permitted to be adduced by the plaintiff in support of his contention that the said lands were of a greater value, for the reason that such evidence is and would be incompetent, irrelevant, redundant and immaterial.

## VII.

Defendant admits that he purchased the said lands and that they were conveyed to him by the plaintiff in this suit through the said Franklin M. Smith for his use and benefit and  
34 in his behalf as his said agent, by an instrument of conveyance, of which the defendant's Exhibit "A" is a true and correct copy, but alleges and shows to the court that the said purchase was made by him in all things under and pursuant to the said Act of Congress of May 27, 1902, providing for the sale of inherited Indian Lands, and pursuant to and in accordance with the rules and regulations promulgated thereunder by the Secretary of the Interior of the United States, a true and correct copy of which said rules and regulations is hereto attached, marked Exhibit "B" and made a part of this answer, and not otherwise.

## VIII.

Further answering, defendant shows to the court that this plaintiff made, executed and delivered to the said Franklin M. Smith, as the agent for the said defendant, his certain warranty deed, Exhibit "A", with full knowledge of all of the facts relative to the employment of the defendant and the manner in which the said sale was made through the Department of the Interior of the United States, and received the consideration therein named, to-wit: The sum of Thirteen Hundred Dollars (\$1300.); and defendant alleges that the said plaintiff is therefore now estopped by reason of his said conduct, from denying the validity of the said deed, and is estopped from attacking the same after any manner or fashion whatsoever, by reason of his own conduct in the premises.

## IX.

Defendant, further answering, shows to the court that with full knowledge of all of the facts and circumstances concerning the sale of the said land to the said defendant  
35 Paul A. Ewert, through his agent, Franklin M. Smith acquired shortly after, if not at the time of the delivery of the said deed, this plaintiff permitted the defendant to enter into possession of the same under the said deed and to occupy and enjoy it at all times since the year 1909 and be in possession thereof unmolested and without protest, and without instituting any legal proceedings of any kind whatever for the purpose of setting up his rights, up to the month of June, 1916, or nearly seven years; and during all of said time, the said plaintiff stood by and saw the defendant improve the said land and erect thereon costly buildings and drill wells and

make other costly and permanent improvements upon said land, and did not institute any suit or any legal proceedings whatsoever for the purpose of questioning the title of the defendant, or ousting him from possession, or setting aside the deed of conveyance, until the institution of the suit in this case in the month of June, 1916; and defendant alleges that the plaintiff, by his said conduct, is guilty of laches and estopped from at this time asserting or claiming any right, title or interest in and to said premises, or from instituting any suit to set aside the said conveyance, or attempting to gain possession of the said land by any manner or legal proceedings whatsoever.

### X.

As a further and separate defense herein, the defendant pleads and relies upon the statute of limitations of actions of the State of Oklahoma in bar of plaintiff's right to  
36 maintain the suit and recover, under said Section 4657 of the Revised Laws of the State of Oklahoma of 1910, and shows to the Court that the plaintiff herein has had both actual and constructive notice of all the facts relied upon by him in the Petition relative to the purchase of the said land by the said defendant, Paul A. Ewert, for more than five years previous to the commencement of this action, and for more than two years previous to the commencement of this action, and for more than two years previous to the commencement of this action, and defendant shows to the Court that said plaintiff during all of the said five years has had actual knowledge of the fact that the said defendant did purchase the lands mentioned, in his own name, and that said plaintiff during said periods of five years and of three years and of two years previous to the commencement of said action was under no legal disability; and defendant prays that this said suit upon said grounds be dismissed as against this defendant, and that he be allowed to go hence and recover his costs herein.

Wherefore: Defendant demands judgment against the plaintiff that he recover nothing and that this suit be dismissed, and that the defendant have his costs and disbursements herein necessarily incurred.

And defendant further prays that in the event this court shall hold that the purchase of the said lands by the said defendant was unlawful by reason of his employment as Special Attorney to presecute certain land suits in Oklahoma, that it shall also find that in making the said purchase this defendant did so with the knowledge and consent and approval of



37 the Commissioner of Indian Affairs of the United States, of the Secretary of the Interior of the United States, and of the Attorney General of the United States, and that it was therefore made in absolute good faith upon his part, and for that reason, the said defendant, if he be required to re-deed the said premises and make due accounting of his use of the same, shall have offset against the value of the said land and the rental of the same, all sums of money in good faith expended by the defendant in the improvements placed upon said lands as alleged in the Answer, to-wit: the sum of One Thousand Dollars (\$1000.), for buildings, a house, barn, granary, etc.; the sum of Three Hundred Dollars (\$300.) for wells and casing for the same; and the further sum of One Hundred Fifty Dollars (\$150.) for improvements made in said land in the breaking up of the sod and making it fit for cultivation; and for the further sum of Three Hundred Dollars (\$300.) necessarily paid in the form of taxes by the defendant to the County of Ottawa State of Oklahoma; and defendant further asks that there be offset against the said amount, a sum of money as interest at the rate of Eight per cent. per annum, from the 9<sup>th</sup> day of April, 1909, on the sum of Thirteen Hundred Dollars (\$1300.) the purchase price of the said land, to the final determination of this suit; and defendant further asks for such other and further relief as to this court sitting as a court of equity may seem expedient and just.

PAUL A. EWERT,

Defendant, Acting as his own Attorney.

405-406 Frisco Building, Joplin, Missouri.

38 State of Missouri,  
County of Jasper—ss.

Paul A. Ewert, first being duly sworn, deposes and says that he is the defendant in the above entitled action; that he has read and knows the contents of the above and foregoing Answer, and that the statements contained therein are true, except as to those matters that are therein stated upon information and belief, and as to those matters, he believes it to be true.

PAUL A. EWERT.

Subscribed and sworn to before me this 30<sup>th</sup> day of September,  
1916.

(Seal)

W. D. LYERLE,  
Notary Public, Jasper County,  
State of Missouri.

My commission expires July 3, 1920.

39

### Exhibit "A".

#### Indian Deed Inherited Lands.

This Indenture, Made and entered into this 10th day of March one thousand nine hundred and nine, by and between George Redeagle, and his wife, Minnie Redeagle of Quapaw Agency, Ottawa County, State of Oklahoma, heirs of—Huldah Quapaw White, deceased, a Quapaw Indian, party of the first part, and Franklin M. Smith of Miami, Oklahoma, party of the second part:

Witnesseth, That said parties of the first part, for and in consideration of the sum of Thirteen Hundred and no/100 (\$1300.00) dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto said party of the second part the following described real estate and premises situated in Ottawa County, State of Oklahoma, to-wit: The East half of the Southeast quarter and the East half of the Southwest quarter of the South-east quarter of section Twenty-one, Township Twenty-nine, North of Range Twenty-three East of Indian Meridian, containing in all 100 acres—together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators, and assigns, forever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year  
40 first above written.

GEORGE REDEAGLE (Seal)

MINNIE REDEAGLE (Seal)

Witnesses:

B. N. O. Walker  
Wm. D. Hodgkiss.



Acknowledgment of United States Indian Agent of Superintendent.

Be it remembered, that on this 10th day of March, 1909, before the undersigned Superintendent & Special Disbursing Agent for the Quapaw Agency, Oklahoma, personally appeared George Redeagle, and Minnie Redeagle, his wife, to me personally known to be the identical persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same as their free and voluntary act and deed for the uses and purposes therein set forth. I further certify that the contents purpose, and effect of the deed of conveyance were explained to and fully understood by the grantors.

In testimony whereof I have hereunto subscribed my name, officially, on the date last above written.

IRA C. DEAVER

Supt. & Specl Disb. Agent,  
Quapaw Indian Agency,  
Oklahoma.

Acknowledgments must be in accordance with the forms prescribed by the State or Territory in which the land is situated.

State of Oklahoma,

County of Ottawa—ss:

Be It Remembered, That on this 10th day of March, A.  
41 D., 1919 before the undersigned, a ..... in and  
for the County and ..... aforesaid,  
personally appeared George Redeagle, and Minnie Redeagle,  
his wife heirs of Huldah Quapaw White, deceased, to me personally known to be the identical persons who executed the within instrument of writing, and such persons duly acknowl-

edged the execution of the same, as their free and voluntary act and deed for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial seal on the day and year last above written.

C. B. COE

(Seal)

My commission expires Feb. 28th, 1912.

Endorsed

Warranty Deed From George Redeagle and wife, Minnie Redeagle, heirs of Huldah Quapaw White deceased Quapaw Allottee No. 24.

Department of the Interior,  
Office of Indian Affairs,  
Apr. 29, 1909

The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved.

R. U. VALENTINE  
Acting Commissioner.

To  
Franklin M. Smith  
E-se  
E-SW-SE 21-29-23 3/10

State of Oklahoma  
Ottawa County—ss.

Department of the Interior,  
Apr. 30, 1909

This instrument was filed for record on the 8 day of June, 1909 at 1 o'clock P. M., and duly recorded in Book 9, on page 72

The within deed is hereby approved.

O. G. JAMES  
Register of Deeds.

FRANK PIERCE  
First Assistant Secretary.

Office of Indian Affairs,  
Land Division,  
May 18, 1909

Recorded in Deed Book, Inherited Indian Lands, Vol. 21, page 159

1903; November 5, 1903; March 21, 1905, and September 19, 1907, printed in italics).

### For Conveyance of Inherited Indian Lands.

To be observed in lieu of the rules heretofore approved in the conveyance of inherited land allotted to members of any tribe of Indians, for which trust or other patents have been issued with restriction upon alienation, under the provisions of the Act of Congress approved February 8, 1887 (24 Stats., 388), or other act of Congress, or any treaty stipulation as authorized by section 7 of the act of May 27, 1902 (32 Stats., 245, 275) Viz:

#### (The Act of Congress)

"That the adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser, the same as if a final patent without restrictions upon the alienation had been issued to the allottee. All allotted lands so alienated by the heirs of an Indian allottee and all lands so patented to a white allottee shall thereupon be subject to taxation under the laws of the State or Territory where the same is situate: Provided, That the sale herein provided for shall not apply to the homestead during the life of the father, mother, or the minority of any child or children."

I. (1) Owners of such inherited indian lands desiring to sell the same may petition the Indian agent, or other officer having charge, within whose territorial jurisdiction the land is situated, praying that the land therein described may be sold under said act In Accordance With The Regulations, and agreeing that the proceeds to be derived therefrom shall be placed in one or more national banks, to be designated by the Commissioner of Indian Affairs, and which said banks shall furnish satisfactory bonds to guarantee the safety of such deposits, to the credit of each heir in proper proportion, subject to the check of such heirs, or, in the case of minors, subject to the check of their recognized guardians, for amounts not exceeding ten dollars to each in any one month when approved by the agent or other officer in charge, and only when so approved, and for sums in excess of ten dollars per month upon the

approval of such agent only when specifically authorized by the Commissioner of Indian Affairs. The petition  
43 shall be signed by all the lawful heirs, and, in case of minors, by their legal representatives, and shall set forth every material fact necessary to show full title under the laws applicable.

(2). When the land is not located within such jurisdiction the owners may petition the most convenient Indian agent, or other officer in charge of an Indian agency or Indian tribe, who shall take like action thereon as if the same were within the territorial limits of such agency or tribe.

(3). When such Indian agent, or other officer in charge, shall be satisfied that the facts alleged in the petition are sufficient, he shall cause a memorandum record of the same to be made in a book to be kept for that purpose and shall file the petition in his office. A copy of such petition shall be immediately forwarded to the Commisisoner of Indian Affairs by such agent or other officer in charge, who shall indorse thereon the date the same was received by him and the date the land described therein will be listed for sale. He shall, on each Monday morning, post in a conspicuous place in his office in such large letters as figures as will be clearly legible, for a period of sixty days a list of the lands described in the petitions received by him during the week preceding each such Monday, showing in separate columns the names of the owners, the descriptions of the lands, the dates when listed, and the date when bids will be opened, and such list shall be accessible to the public at all times in busines hours of the office. On each Monday the Indian agent or other officer in charge will forward to the Commissioner of Indian Affairs a complete list of all lands posted in his office for sale.

(4). When any tract of land has been posted for sale, the Indian agent or other officer in charge shall visit, view, And Appraise It At Its Value for the purpose for which it is best adapted, according to his best judgment. If such agent or officer is from any cause unable to personally appraise the lands, he shall require the appraisement to be made in like manner by the most competent officer or employee under his charge. A certificate of said appraisement signed by the person making it shall be sealed and not opened until the date of sale. The Appraisement Shall Not Be Made Public, Either Before Or After The Sale, and no bid for less than the appraised value shall be considered. If such agent or officer shall add a cer-

tificate of the qualifications and integrity of the appraiser, and that he believes the appraisal to be the value of the land.

(5). Bids will be received for inherited Indian lands up to 12 o'clock noon of the day upon which bids are advertised to be opened, at which hour they will be opened. Paragraph 5 of section 1 of the Amended Rules is amended in accordance herewith.

No bidder will be permitted to include more than one allotment in any bid. If a prospective purchaser desires to bid on more than one allotment he must submit a separate  
44 bid for each allotment which he desires to purchase, and if he wishes to purchase less than an entire allotment he may submit a bid for one or more legal subdivisions of such allotment.

(6). Under no circumstances will the Indian agent or other officer in charge, or any person connected with an agency office, be permitted to prepare any bid or assist any prospective bidder in preparing his bid.

Each bid must be accompanied by a duly certified check on some solvent bank, payable to the Commissioner of Indian Affairs, for the use of the grantors, for 25 per cent of the amount offered, as a guaranty for the faithful performance by the bidder of his proposition. If the bid shall be accepted and the successful bidder shall, within a reasonable time, after due notice, fail to comply with the terms of his bid, such check shall be forfeited to the use of the owner of the land.

All such bids shall be inclosed in a sealed envelope, which must be marked by the bidder "Bid for inherited land."

In the advertisements concerning the sale of inherited Indian lands notice will be given to the effect that the sealed envelope containing bids should not have noted thereon descriptions of the lands to which the bids relate, but that there shall be noted on such envelopes the dates upon which the same are to be opened.

(7). The right to reject any or all bids is reserved, and bids will only be accepted by such agent or other officer, Subject To The Approval Of The Owner Of The Land.

(8). Purchasers shall pay all costs of conveyancing and, in addition, the following sum, to-wit: If the purchase price is one thousand dollars or less, \$1.50; if it be more than one

thousand dollars and less than two thousand, \$2; and where the purchase price is more than two thousand dollars, \$2.50; to be used by the Commissioner of Indian Affairs for giving due public notice of the sale as herein provided.

(9). Bidders and other interested persons may be present when bids are opened. When opened, the bids shall be so recorded in a book to be kept for that purpose as to show name of bidder, description of land, amount offered, and action taken thereon.

(10). Lands not disposed of at the appointed time may, if the owner so desires, be relisted and offered for sale after thirty days' advertisement, under the same rules governing their original listing.

(11) The Commissioner of Indian Affairs shall cause an advertisement to be published in some local paper of  
~45 general circulation in the section of the country in which lands authorized to be listed are located, and such other newspaper as he may deem advisable, by which the public will be informed that inherited Indian lands within the limits of the agency, offered for sale under the act of May 27, 1902, will be publicly listed at the agency, where sealed proposals for any tract of the list will be received during the sixty days following the date when the same was listed, in accordance with regulations which may be had on application, in person or by letter, to the agent or officer in charge.

A list of the lands offered for sale will be published in the weekly edition of the newspaper of widest circulation in the county in which such lands are situated, such list to be corrected on Monday of each week, adding thereto such other lands as may have been listed and removing therefrom such lands as may have been sold during the prior week.

Agents or other officers in charge will, on request, furnish a list of all lands offered for sale to anyone making application therefor.

The agent or other officer in charge shall not incur indebtedness for promulgating notices of sale of inherited Indian lands in excess of the amount of fees collected, as authorized by paragraph 8 of section 1 of these amended rules, or the payments made by petitioners for the sale of such lands for the more extensive advertising thereof; but any petitioner, with the consent of such officer and on depositing with him the necessary fees, may cause notices of the proposed sale to be published in such papers as he may select. Agents and other officers in

charge may, when it appears that the interest of the petitioners will be benefited thereby, require them to deposit five dollars to defray the cost of giving wider notice of sale. Larger deposits will not be required without specific authority from the Commissioner of Indian Affairs.

III. Such deed or instrument of conveyance, when submitted for the Secretary's approval must be accompanied by the original petition, the appraisement, all bids and checks relating to the lands covered by such deed, and a full report by the agent or other officer in charge of all proceedings previous to the execution of the deed: also—

(1). By a certificate signed by two members of a business committee, if there be such, or by at least two recognized chiefs, or by two or more reliable members of the tribe, setting forth that the allottee to whom the land was originally allotted is dead, giving as nearly as possible the date of death. Such certificate shall also show the names and ages of the heirs, adults and minors, of such deceased allottee, but the Department reserves the right to require, if in its judgment it shall be considered necessary, such further and additional evidence relative to heirship as may be deemed proper. If the persons who certify to the death of the allottee are, from their own knowledge, unable to certify as to who are the heirs (with their names and ages) of such deceased allottee, an additional certificate made by persons of one of the three classes herein specified, showing who are the heirs and giving their names and ages (adults and minors), must be furnished.

(2). By a certificate from the Indian agent, superintendent of school, or other officer having charge of the Indian tribe, that the contents, purport, and effect of the deed of conveyance were explained to and fully understood by the grantors; that the consideration specified in the deed is a fair price for the land; that the same has been secured to be paid to the grantors in lawful money of the United States; and that the conveyance is in every respect free from fraud or deception; and that said allottee did not reside upon his homestead or allotment, nor cultivate the land sold during his lifetime and immediately preceding his death. If the allottee did reside upon such land, then it must be shown of whom the family of deceased allottee consisted, their ages, and relation to said deceased allottee, in order to determine whether it is a case in which a sale is authorized under the said act of May 27, 1902.

(3). The consideration money must in no case be paid to the grantors; but a certificate from the cashier or other officer,



of some reputable bank, or, in case there is no bank convenient, from a United States Indian agent, showing that the stipulated price named in the deed for the land has been deposited in such bank, or with such agent, as the case may be, to be paid to the grantors or their order, upon the presentation of the deed duly approved by the Secretary of the Interior, or by the President, must accompany such deed.

(4). When the deed is acknowledged before an officer other than an Indian agent or superintendent, it must be accompanied (in lieu of the certificate of the Indian agent in other cases required) by a certificate of the officer taking the acknowledgment as to the facts required to be certified by the Indian agent; or, if such facts shall not be known, to such officer, they must be verified by the affidavits of at least two credible disinterested persons who are cognizant of these facts, whose veracity must be certified by such officer.

(5). Where these rules specify two or more officers or other persons to perform certain duties, preference must, in all cases, be given to such officers or persons in the order named.

(6). The affidavits of the grantors and the grantees must accompany such deed, showing that there is no contract, agreement, nor understanding (written or verbal) whereby the consideration money or price paid  
47 for the land, or any portion thereof, is to be refunded to the purchaser after the approval of the deed; nor any live stock, implements, or other article, or thing are to be exchanged or taken in lieu of said consideration money or purchase price, or any portion thereof, for such land. Each deed must be accompanied by an affidavit of the grantee, stating that he is not a party to any association or combination of persons to acquire lands under said law at less than their fair value or to prevent open and fair competition in the purchase and sale of lands; that he is not directly or indirectly connected with or interested in any devise, scheme, or plan to prevent or interfere with fair competition in the purchase of such lands or to secure them at less than their fair market value, and that the contract under which the deed presented for approval was executed was not procured through or by means of any such plan or scheme; that such contract was not secured through false representations to the grantor, or suppression of facts as to the value of the land or as to any other feature of the transaction, and that neither the grantor, nor anyone acting for him or in his place, has been given or promised any money or other thing by the grantee, or by anyone with his advice,

consent, or knowledge, except the consideration named in the deed, to induce him to agree to such sale of his land.

(7.) The testimony and all papers pertaining to the conveyance must be properly authenticated under seal, and in all other respects the conveyance must conform to these rules.

IV. When the land conveyed, or any part thereof, is less than a legal subdivision, or does not conform to the public survey, a diagram prepared by a competent surveyor, or an authenticated copy of the official plat of survey, indicating all the land intended to be conveyed, and all former sales by the grantors or allottees, must be furnished for the use of the Indian Office.

V. No deed of conveyance for an undivided interest in any tract of land will receive approval. All the heirs of a deceased allottee must unite in one deed conveying their entire interest in the land. If the land of a deceased allottee has been partitioned among his or her heirs any such heir may sell the portion set off to him in and by such partition. Where there have been court proceedings, a certified copy thereof must accompany the deed.

VI. If in the case of any deceased allottee there shall have been or shall thereafter be probate or other court proceedings establishing who are the heirs of such deceased allottee, a certified copy of the final order, judgment, or decree of the court, showing and determining such heirship, must be furnished; but where such court proceedings have not been had a compliance with the requirements of the provisions of paragraph 1 section III of the rules as amended will be deemed as sufficient to establish the heirship.

48 In all cases the probate judge, or officer having probate jurisdiction, is respectfully requested and urged, in taking the bond of guardian, to require such guardian to give a trust and guarantee company, wherever practicable, as surety.

VII. A form of deed of conveyance has been prepared and printed for gratuitous distribution by the Indian Agent, superintendent, or other officer in charge of the Indian tribe, which must be used or conformed to in all cases of transfer of inherited Indian lands.

No Proceeding Or Action Under These Regulations Shall Effect In Any Respect The Right Of The Secretary Of The In-

terior To Exercise The Discretion Given Him By Law Relative To Approval Of Deeds For These Lands.

C. F. LARRABEE,  
Acting Commissioner of Indian Affairs.

Approved September 19, 1907.

G. W. WOODRUFF,  
Acting Secretary.

(Capitals and Italics are ours)

Endorsed: Answer, Filed in the U. S. District Court October 2, 1916.)

49

(Order of Submission.)

March Term, 1917.

March 15, 1917.

Before Judge Campbell.

Now on this 15th day of March, 1917, after hearing the evidence offered, it is ordered by the Court that this cause be and the same is hereby submitted.

51

(Plaintiff's motion to set aside Order of submission and for leave to file an amended petition.)

Comes now the plaintiff herein and moves the court to set aside the order of submission of this case and permit the plaintiff to amend his petition herein, and offer further evidence in support thereof;

And the plaintiff now presents to the court, with this motion, his amended petition, which he so asks leave to file, and assurance to this Court of the plaintiff's good faith in making this application, the plaintiff, with this motion, here exhibits to this court the following evidentiary matter relating to new matter charged in his amended petition:

# I.

In support of the plaintiff's allegation that the Interior Department was deceived and misled into approving the deed in plaintiffs' petition described, and that such Interior Department did not have any knowledge that the defendant, Paul A. Ewert, was the real purchaser of said property, the plaintiff exhibits:

An official letter of the Interior Department, dated June 26, 1911, addressed to the Attorney General of the United States, asking for advice with reference to the rights of Paul A. Ewert, the defendant, herein, to purchase Indian lands, which letter reads as follows:

“Land—  
Sales

40233-1909

E S S

6/26 09

Inherited Indian land  
deed to Paul A. Ewert.

The Attorney General.

Sir:

On May 1, 1909, the Superintendent of the Quapaw Agency forwarded an inherited Indian land deed executed by the heirs of Charles Bluejacket, conveying to Paul A. Ewert, for \$5000, 200 acres of land in Ottawa County, Oklahoma.

Mr. Ewert is an employee of your Department, detailed by the Department of Justice to examine the legality of titles of Quapaw lands.

The matter is referred for your consideration, and the deed will be held in the Indian Office pending your advice.

Yours respectfully,

(Sgd) FRANK PIERCE,  
First Assistant Secretary.

EH-19  
2462

---

An official letter from the Interior Department dated July 26, 1909, as follows:

"K. M. T.

W. C. P.

Department of the Interior,  
Washington.

D-8284.

July 26, 1909.

Subject:

Deed: Heirs of Blue-jacket to Paul A. Ewert.

The Commissioner of Indian Affairs.

Sir:

With your letter of July 19, you forwarded with recommendation for disapproval, a deed by the heirs of Charles Blue-jacket, conveying to Paul A. Ewert for \$5000, two hundred acres of land in Ottawa county, Oklahoma.

The only objection to approval of this deed is the fact that the grantee at the time of purchase was, and still is, an employe of the Department of Justice, engaged in investigating illegal sales and leases of lands within the Quapaw agency, and prosecuting litigation for cancellation of such illegal instruments.

When the deed was received the matter was called to the attention of the Attorney-General who, in his letter of July 2, states that he has discussed the matter with Mr. Ewert and has received an explanation "which, it seems to me, frees him from any offense in the transaction."

This land was appraised at \$4900 and offered at public sale a number of times, the highest bid received being \$4000. At the offering when Ewert purchased his was the only bid received. There is nothing in the papers to indicate that Ewert gained an advantage in this matter by reason of his employment by the Department of Justice, or that there was any irregularity whatever in the transaction. Under these circumstances, and in view of the statement made by the Attorney-General, and the further assurance from Mr. Ewert that he recognizes it would be indiscreet to continue to buy lands at this agency, and will not do so, the Department has con-

cluded that the deed may be approved. That has been done and the papers with your letter of July 19, are herewith.

Very respectfully,

FRANK PIERCE,  
First Assistant Secretary."

---

An official letter from the Interior Department dated June 8, 1911, addressed to Honorable James S. Davenport, member of Congress, as follows:

"2-2256

Land-  
Sales  
48946-1911  
J F M

Jun 8 1911

54 Hon. James S. Davenport,  
House of Representatives.

Sir:

I have the honor to acknowledge the receipt of your letter of June 1, 1911, relative to complaint made to you regarding sales of allotted and inherited Indian lands by the Superintendent of the Seneca Indian School, Wyandotte, Oklahoma, and inquiring whether or not the rule prohibiting employes of the Government from purchasing such lands has been abolished, and citing the case of Mr. Paul A. Ewert, Assistant to the Attorney General, who purchased lands belonging to the estate of Charles Bluejacket, deceased.

In response, you are advised that the rule referred to has not been abolished and is incorporated in the Rules and Regulations approved October 12, 1910, as follows:

'(3) Employees not allowed to bid,—Under no circumstances will the superintendent or other officer in charge, or any person connected with an agency office or the Indian Service, be permitted to bid or to make or prepare any bid or assist any prospective bidder in preparing his bid.'

This rule is substantially the same as that contained in the Regulations formerly in force, approved September 19, 1907, which was as follows:

'(6) Under no circumstances will the Indian agent or other officer in charge, or any person connected with an agency of-

face, be permitted to prepare any bid or assist any prospective bidder in preparing his bid.'

Copies of the Regulations of 1907 and also those of 1910 are enclosed.

The sale to Mr. Ewert referred to by you was under date of July 19, 1909 (Indian Office Nos. 55214-1909, 40233-1909 and 55652-1909) submitted by the Commissioner of Indian Affairs to the Department with the recommendation that it be disapproved; but after careful consideration by the Department, it was approved on July 26, 1909. Considerable correspondence passed between the Department and the Department of Justice regarding the matter which was investigated specially by a Special Agent of the Department of Justice and also by an Inspector of this Department, without eliciting anything which would warrant the institution of a suit to set aside the deed.

55 In this connection it may be observed that Mr. Ewert is not an employee of the Indian Office, and in strictness was within his legal rights in bidding on the land in question. There has been no sale to Mr. Ewert of any Indian land other than the Charles Bluejacket allotment, of which this Department is aware, and no bids have been received from him since the approval of that sale.

With regard to the purchases and sales made through the Security Bank, of Pipestone, Minnesota, mentioned by you, you are advised that the records of the Indian Office afford no information thereof, and the Superintendent has been requested to submit a report as to any such transactions.

Respectfully,

(Signed) WALTER L. FISHER,  
Secretary.

6-WKY-6.

An official letter dated June 1, 1911, addressed to Honorable Walter L. Fisher, Secretary of the Interior, as follows:

"House of Representatives

48946-1911.

Washington, D. C., June 1, 1911.

Hon. Walter L. Fisher,  
Secretary of the Interior,  
Washington, D. C.

Dear Sir:

A portion of the Third Congressional District in Oklahoma is what is known as the Wyandotte Indian Agency or the Con-



federated Tribes. Part of the land in that section of the State has had the restrictions removed and other parts have not. Under the law some of the lands may be sold through the Superintendent of Schools at the Wyandotte, Mr. Ira C. Deaver.

I have had a great deal of complaint regarding the sale of these lands, but whether or not they are justified I do not know. For a long time the appraisalment prior to the bids being filed was not made public, but now that you have changed the ruling upon that question there is no further complaint along that line.

56 There is one thing, however, that I do desire to ascertain, and that is whether or not the Department has abolished its rules and regulations which were heretofore in effect, prohibiting any of the employes of the government in charge of Indian lands or business affecting the sale of Indian lands to buy Indian lands. My reason for asking this question is plain. There is an Assistant Attorney General, Hon. Paul A. Ewert, whose home I am advised, prior to coming to Oklahoma, was Pipestone, Minn. Mr. Ewert has been dealing in the lands sold through the Superintendent and has now on record in Ottawa County a deed to a tract of land of two hundred acres, known as the Nellie Bluejacket tract of land. And also is the past there has been a number of purchases and sales through the Security Bank of Pipestone, Minn., the home town of Mr. Ewert.

I am writing for a number of citizens of that section of the country, and they desire to know whether the Department has abolished its rules and regulations, with reference to the employes looking after the Indian lands, prohibiting them from purchasing or dealing in the sales while engaged in the government business.

The reason I am writing is because the deed Mr. Ewert has on record seems to have been approved by Hon. Frank Pierce, 1st Assistant Secretary on July 26, 1909.

Awaiting your reply, I am

Very truly yours,  
(Signed) JAMES S. DAVENPORT.

6-WKY-6.

A letter of the defendant dated July 10, 1909, addressed to the Interior Department:

"Department of Justice, Washington

Miami, Okla, July 10th, 1909.

Hon. Franklin Pierce,  
Asst. Secy of the Interior,  
Washington, D. C.

Dept of Interior  
Received Jul 13  
1909

Dear Sir:

In connection with the Deed of the Heirs of Charles Blue-jacket to me, before you for approval, I wish to submit the letter written by me to the Hon. Attorney General, in connection therewith. It fully explains my position in the matter. I invite the fullest inquiry in the matter, because if made I am sure that it will resolve itself in my favor.

I do not particularly care for the land, but Mr. Pierce, I am sensitive about having the deed disapproved by you, because I do not feel that I have acted otherwise than within the law in the matter, and a disapproval might lend credence to a rumor that might be started to that effect.

I hope that you will call for all the papers that ought to accompany the report of the Agent to the Commissioner of Indian Affairs. I am not in the business of buying these lands, and saw no reason why I might not bid at such a public sale.

I believe that it would be indiscreet to continue the buying of these lands, and do not intend to do so.

Yours truly,

PAUL A. EWERT.

A letter dated October 30, 1909, addressed to the Interior Department by S. M. Brosius, Agent Indian Rights Association:

“Copy

Telephone Main 1952

S. M. Brosius,  
Agent Indian Rights Association and  
Counselor at Law,  
McGill Building, 908 G St., N. W.,  
Washington, D. C.

October 30, 1909.

Honorable Secretary of the Interior,

Sir:

Attention has been called to the sale by the heirs of Charles Bluejacket, a Quapaw Indian of Oklahoma, of two hundred acres of land comprised in his allotment, and the approval of the deed of sale by the Acting Secretary, on July 26, 1909.

It appears that the land in question was advertised under the Rules of the Department inviting bids to be submitted to the Superintendent in Charge providing that the land should be sold at not less than the appraisement; that the land was appraised at \$4900.; that there was one bid only, Mr. Paul A. Ewert offering \$5000. for the land. It further appears that Mr. Ewert, the purchaser, was at the time of submitting the bid, and on the date of approval of the deed, a special Assistant to the Attorney General of the United States, employed in connection with the matter of setting aside unlawful deeds in the Quapaw Agency.

Section 2078, Revised Statutes of the United States prohibits trade with Indians in certain cases, and the Rules promulgated by your Office, June 29, 1909, (Indian Office Circular No. 318), forbid employes from having any interest or concern on their own account in transactions of this character, and that offenders will be summarily dismissed.

We have no personal knowledge of the value of the land in question, but it is reported to be good farming land and that the fee-simple for mining purposes is extremely valuable, the tract being within the Baxter Springs lead and zinc camp, with several shafts already on the property.

Is not this a most dangerous precedent to establish in disposing of property of Indian wards by the guardian Government? The fact that the purchaser is in the employe of the guardian, and engaged in the capacity of protecting the in-

terests of the particular Indians affected, places the greatest responsibility upon the Government to see that the ward's interests are fully protected. The additional fact that there was but one bid for the land, and that one bid but slightly in advance of the appraised price would seem to render the wisdom of approving the sale extremely doubtful.

We trust that you may determine to review this transaction.

Very respectfully submitted,

S. M. BROSIUS,  
Agent, Indian Rights Association.

---

59 A letter to the Attorney-General of the United States  
1909: from the Interior Department, dated November 19,

"Copy

"Department of the Interior Washington

K. M. T.

F. W. C.

W. C. P.

November 19, 1909.

The Attorney-General.

Sir:

Enclosed, for your information, is copy of a letter addressed to this Department by S. M. Brosius, agent of the Indian Rights' Association, relative to the deed from the heirs of Charles Bluejacket, a Quapaw Indian, to Paul A. Ewert. The deed referred to was submitted to you by department letter of June 26, and after receipt of your communication, dated July 2, was approved.

Very respectfully,

FRANK PIERCE,  
First Assistant Secretary.

---

A letter to S. M. Brosius, Agent of the Indian Rights Association dated November 19, 1909:

“Copy

Department of the Interior  
Washington.

November 19, 1909.

F. W. C.

S. M. Brosius, Esq.,  
Agent of the Indian Rights' Association,  
Washington, D. C.

Sir:

The Department received your communication of October 30, relative to a deed from the heirs of Charles Bluejacket, a Quapaw Indian, to Paul A. Ewert. This deed was approved July 26, and, presumably, has been delivered to the grantee. Mr. Ewert being an employe of the Department of Justice, a copy of your letter has been sent to the Attorney-General for his information.

Very respectfully,  
FRANK PIERCE,  
First Assistant Secretary.

---

60 Telegram dated November 16, 1909, from the Interior Department to Deaver, Superintendent:

“Copy

November 16, 1909.

Beaver, Superintendent  
Wyandotte, Oklahoma.

Has deed Bluejacket heirs to Ewert been delivered? It not, hold for further instruction.

FRANK PIERCE  
First Assistant Secretary.

WCP

Chg. G. R.

---

Telegram dated November 16, 1909, from Deaver, Superintendent:

"Copy

The Western Union Telegraph Company

Received at 4-17 P. M. 7WAF27CollectGOVT.

November 16th, 1909.

Seneca, Mo. 16th.  
Secretary of the Interior,  
Washington, D. C.

Bluejacket deed was delivered to grantee Sept 21st. Anderson instructions office letter Sept. 17th.

DEAVER,  
Supt."

Letter dated December 20, 1909, Attorney-Generals office to Secretary of Interior:

"Copy

EK-L  
147339-4  
HCL

Department of Justice  
Washington.

EK  
HCL-GM

November 20, 1909.

61 The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt of your letter of November 19, 1909, (FWC WCP), inclosing a copy of a letter addressed to your Department by S. M. Brosius, Agent of the Indian Rights Association, relative to a deed made by the heirs of Charles Bluejacket, a Quapaw Indian, to Paul A. Ewert, Special Assistant to the Attorney-General.

The letter of Mr. Brosius will receive the careful attention of this Department.

Very respectfully,

WADE H. ELLIS,  
Acting Attorney-General."

Letter dated December 20, 1909, Attorney-General from Secretary of Interior:

“Copy

Department of the Interior  
Washington.

December 20, 1909.

My dear Mr. Attorney-General:

I thank you for your letter of the 4th instant in which you enclose a copy of the report to you of W. R. Benham, Special Agent of your Department, on the purchase by Mr. Paul A. Ewert, a Special Assistant Attorney of your Department, of an allotment of land belonging to a Quapaw Indian in the State of Oklahoma. Mr. Ewert bought this land for \$5,000, while Mr. Benham reports its actual value at \$15,000 at the time he purchased. The great discrepancy between the value of the land and the price paid would seem to indicate fraud on the part of Mr. Ewert. Do you not think that the facts present a case strong enough for your Department to institute proceedings to set aside the deed to Mr. Ewert? It seems to me that this ought to be done.

I have referred Mr. Benham's report to the Indian Office and directed an investigation to determine the good faith and ability of our agent at the Quapaw Agency.

62

Very respectfully yours,  
R. A. BALLINGER  
Secretary.

Hon. George W. Wickersham,  
Department of Justice.”

Letter dated December 20, 1909, from the Secretary of the Interior to the Commissioner of Indian Affairs:

“Copy

Department of the Interior  
Washington.

Pierce

December 20, 1909.

The Commissioner of  
Indian Affairs.

Sir:

Herewith is a letter from the Attorney-General, dated December 4th, transmitting copy of report by Special Agent



Benham of that Department respecting the purchase by Mr. Paul A. Ewert, Special Assistant Attorney of the Department of Justice, of the Charles Bluejacket land in the Quapaw Agency. I also enclose copy of my reply to the Attorney-General.

I wish a most careful and exhaustive examination to be made into this case, and also the good faith and ability of the present agent at the Quapaw Agency. If it be true that our agent is at fault in these matters, I wish to know it so that he may be summarily dealt with. After a careful investigation of the matter, kindly report to the Department.

Very respectfully yours,

R. A. BALLINGER,  
Secretary.

63 Letter dated December 21, 1909, to the Secretary of the Interior from the Attorney-General:

"Copy

W R

Office of the Attorney General

Washington, D. C.,  
December 21, 1909.

Department of Justice

147339-8

Hon R. A. Ballinger,  
Secretary of the Interior.

My dear Mr. Ballinger:

Replying to yours of the 20th instant, I do not think the facts concerning the purchase by Paul A. Ewert, Special Assistant Attorney, of an allotment of land belonging to the Quapaw Indians in the State of Oklahoma, present a case strong enough to warrant this Department to institute proceedings to set aside the deed to him. It is true that he bought the land for \$5,000, while Mr. Benham reports its actual value at the time of its purchase at \$15,000, but is also appears that the valuation was made two years before Mr. Ewert went to Oklahoma, and that the property was twice previously advertised for sale and each time the bidder offered less than the appraised value. These are the only additional facts learned since the deed was presented for ap-

proval last June. At that time I told Mr. Ewert that I saw no legal reason why he should not purchase the land in question, although, as a matter of propriety, I thought it was a mistake for an employee of this Department to be engaged in the purchase of Indian lands or even of one parcel of Indian land; and then promised me that he would make no further purchase, or have any further dealings in such lands.

I have no doubt, however, that if I should request it, he would reconvey the property to the Government upon receiving back his purchase money, and if you think it desirable to make that request of him, I will do so; although I should prefer not to, in view of the action taken in June and above referred to. Please let me know, upon reconsideration, what action you would prefer to have taken.

Faithfully yours,

GEORGE W. WICKERSHAM,  
Attorney General.

---

64 Letter dated December 22, 1909, from Secretary of Interior to Attorney General:

“Copy

Department of the Interior.  
Washington

Pierce

December, 22, 1909.

My dear Mr. Attorney-General:

I thank you very much for your letter of the 21st instant, with reference to the purchase by Special Assistant Attorney Paul A. Ewert of an allotment of Quapaw Indian lands in the State of Oklahoma. I have very carefully considered the statements contained in your letter and from your statements I very readily acquiesce in your view that at the present time no action should be taken against Mr. Ewert to set aside the deed; neither should he be called upon to reconvey the property, upon the information which we now have. However, I have directed the Indian Office to make a very careful investigation. As soon as I get the report of the investigation made by the Indian Office I will write you again, or confer

with you personally about the matter; meanwhile, as you suggest, I will let the matter remain in statu quo.

Very respectfully yours,

R. A. BALLINGER,  
Secretary.

Hon. George W. Wickersham,  
The Attorney-General,  
Washington, D. C.

---

Letter dated December 27, to the Secretary of the Interior  
from R. G. Valentine, Commissioner:

"Copy

Department of the Interior  
Office of Indian Affairs  
Washington.

EPH

Land-Sales  
101451-1909.

R H H

Inspection

Dec. 27, 1909.

Investigation Quapaw Agency.

65 The Honorable,  
The Secretary of the Interior.  
Sir:

I have the honor to acknowledge the receipt of your letter of December 20, 1909, enclosing a copy of the report of Special Agent Benham of the Department of Justice concerning the purchase by Paul A. Ewert of the Charles Bluejacket allotment, and relative to conditions at the Quapaw Agency. You request that a careful and exhaustive examination be made in this case, and as to the good faith and ability of the present Superintendent of the Seneca Indian School, who is the officer in charge of the Quapaw Agency.

This investigation will be immediately undertaken and the office will endeavor to ascertain all the facts and conditions existing at this agency and any further facts which can be procured relative to the particular transaction in question and the conduct of the Agent in connection therewith. The

result of such investigation will then be submitted for your consideration.

Very respectfully,

R. G. VALENTINE,  
Commissioner.

REP-23-6796

Letter February 17, 1910, Commissioner of Indian Affairs to Don M. Carr:

"Copy  
1-47216

EPH

Department of the Interior  
Office Commissioner of Indian Affairs.

February 17, 1910.

Commissioner  
13752-1910  
F W B

Dear Mr. Carr:

I enclose for your consideration a letter from Hon. Joseph L. Bristow, U. S. Senate, with which he forwards letter from Mr. E. T. McCarthy concerning certain charges against Mr. Paul A. Ewert.

The other papers in the case are now in the hands of Mr. Linnen.

Sincerely yours,

R. G. VALENTINE,  
Commissioner.

Don M. Carr, Esq.,  
Department of the Interior.

Letter February 18, 1910, Interior Department to Bristow:

"Copy

Department of the Interior.  
Washington

February 18, 1910.

My Dear Senator:

I have your letter of February 15 to the Commissioner of Indian Affairs enclosing a communication to you from Mr. McCarthy of Baxter Springs, Kansas, with respect to the complaint against Mr. Paul A. Ewert.

Mr. McCarthy's letter has been forwarded to the Inspector in the field who is now investigating the matter in question.

Very truly yours,

R. A. BALLINGER,  
Secretary.

Hon. Joseph L. Bristow,  
United States Senate.

---

67 Letter February 18, 1910, Secretary of Interior to Inspector, E. B. Linnen:

"Copy

Department of the Interior  
Washington

February 18, 1910.

Inspection  
E P H

Mr. E. B. Linnen,  
Inspector.

Sir:

Enclosed herewith is letter of January 27, 1910, from the Acting Attorney General transmitting request of Paul A. Ewert, Special Assistant to the Attorney General, for investigation of matters referred to in his letter of November 6, 1909.

Mr. Ewert's request of November 6, 1909, file 91127-1909, was turned over to you on January 7, 1910, by the Chief Supervisor of the Indian Service with request that you make the investigation in connection with your other assigned duties while in the territory.

Very respectfully,

R. A. BALLINGER,  
Secretary.

DND-15

---

Letter dated February 18, 1910, to Attorney-General from Secretary of Interior:

“Copy

Department of the Interior.  
Washington.

February 18, 1910.

Inspection  
E P H

The Attorney General,

Sir:

68 I am in receipt of your letter of January 27, 1910, transmitting letter of January 22 from Paul A. Ewart, Special Assistant to the Attorney General, in reference to his request of November 6, 1909, for the assignment of a Special Agent or inspector to the investigation of matters in connection with Indian mineral leases of the Quapaw Agency.

I have to report that the matter was on January 7, 1910, referred to an Inspector of the Department for investigation.

Very respectfully,

R. A. BALLINGER,  
Secretary.

---

Letter of the defendant, Ewert, to the Interior Department, dated April 15, 1913:

“Paul A. Ewert  
Attorney and Counsellor at Law,  
Miners Bank Building,  
Joplin, Missouri.

April 5, 1913.

The Hon. Secretary of the Interior,  
Washington, D. C.

Dear Sir:

I enclose you herewith special warranty deed from Grace Sacto Walker, formerly Grace Redeagle Sacto, and John Walker, her husband, to me, asking that you approve the same. In explanation thereof, permit me to say that the 100 A tract of land in question is one that was originally, to-wit: in 1909, sold to Franklin M. Smith, and thereafter, to-wit, purchased from Franklin M. Smith by the undersigned. The original sale from George Redeagle and Minnie Red-

eagle, his wife, to Franklin M. Smith was made under the Act of 1902, providing for the sale of inherited Indian land and pursuant to the rules and regulations of the Secretary of the Interior. If you will examine the files relative to the original sale, you will find there is a certified copy of the final decree of the United States Court in and for the northern district of Indian Territory, sitting at Miami, showing that the estate of Huldah Quapaw White was in due form of law, probated in the United States Court for the northern district of Indian Territory, and that pursuant to such action, Grace Sacto and George Redeagle were found to be the lawful heirs of Huldah Quapaw White.

In further explanation, it may be said that the United States does not hold the Quapaw lands in trust, but they have deeds to their lands in fee simple, solely with a restriction upon alienation for the period of 25 years.

Recently I tried to procure a loan upon the land in question, but the Loan Company desired that I should procure a quit claim deed from the other heir to Huldah Quapaw White and I therefore procured the same and offer it to you for your approval. The Loan Companies are, as you know, great sticklers in the matter of titles and before they will approve the loan, they must have the quit claim deed in question.

Will you do me the great favor to act upon this matter at once? If is purely a matter of form and there ought to be no occasion for delay. In any event, it will be a great accommodation to me if the Honorable Secretary will at once give this matter his consideration and approve the deed. It probably will be necessary to call for the file in this case so as to show that the prior sale of the land in question is in due form and regular.

Won't you please do me the favor to hurry this matter through, because I am waiting for it.

As above stated, I enclose herewith an original deed from George Redeagle to Franklin M. Smith, and the deed from Franklin M. Smith to me, together with a copy of the final decree in this case. Be kind enough to return these instruments to me.

Yours truly,

PAE

PAUL A. EWERT.



- 70 Letter of Ewert to Secretary of Interior, dated May 5, 1913; in which he stated:

"In April, 1909, there was sold, under the Act of 1902 permitting the sale of inherited Indian lands and pursuant to the rules and regulations of the Secretary of the Interior, a certain tract of land, to-wit, 100 acres to one Franklin M. Smith. The sale was made, the deed approved by the Secretary of the Interior and it was regular in every form, being a portion of the land inherited by George Redeagle from Huldah Quapaw White. In due form of law, the Federal Court of Indian Territory found the heirs and partitioned the 200 acre allotment of Huldah Quapaw White between George Redeagle and Grace Redeagle Sacto, his sister and the sole other heir. George Redeagle sold his 100 acres to Franklin Smith as above alleged. Thereafter I purchased the land of Franklin Smith and sometimes ago I endeavored to procure upon it a farm loan from the Parker-Wise Investment Company of Vinita."

---

Letter of Ewert to F. H. Abbott, dated May 9, 1913; in which he stated:

"On April 5, 1913, I addressed a letter to the Secretary of the Interior enclosing a quit claim deed from Grace Sacto Walker to myself, covering a 100 A tract of land which had theretofore been purchased from George Redeagle, one of the heirs of Huldah Quapaw White, a deceased Quapaw allottee. The 100 A was purchased about four years ago by one Franklin Smith from George Redeagle at the government sale, and thereafter I purchased the land from Mr. Smith. The 100 A tract is one half of the 200 A allotment of Huldah Quapaw White, Quapaw allottee No. 2."

---

71 A certified copy of an official letter showing the disapproval of the plaintiffs' deed, which said letter is of the tenor following, viz:

"Department of the Interior.

Office of Indian Affairs,

Washington,

Land-  
Sales

July 19, 1909.

55214-1909

49233- "

55652- " "

E S S

Sales of allotment of  
Charles Bluejacket.

The Honorable,

The Secretary of the Interior.

Sir:

On May 1, 1909, the Superintendent of the Quapaw Agency forwarded an inherited Indian land deed executed by the heirs of Charles Bluejacket, conveying to Paul A. Ewert for \$5000, 200 acres of land in Ottawa County, Oklahoma.

Mr. Ewert is a Special Assistant to the Attorney General, detailed by the Department of Justice to examine the legality of titles of Quapaw Indian lands, and is now engaged in this capacity.

The case has been carefully investigated and it appears from the papers in the case that Mr. Ewert acted within the law and there is no suspicion of fraud in the transaction. The appraised value of the land described in the deed is \$4900. The tract has been advertised and readvertised a number of times, but in each case the bids did not equal the appraisement.

The Indian Office has prohibited any of its employees from purchasing Indian lands or dealing with Indians in their personal capacity, and it is believed that in the interest of good administration and in harmony with an order issued by the Department on June 29, 1909, that this deed should be disapproved and the land readvertised. All the papers in the case are inclosed for your consideration, and attention is invited to the letter from Mr. Ewert, dated July 10, 1909, addressed to

Hon. Franklin Pierce, Assistant Secretary of the Interior. It is respectfully recommended that the deed be disapproved.

Very respectfully,

72

R. G. VALENTINE,  
Commissioner.

EPH.

OGP-15  
3173

The within deed is disapproved and is returned.

FRANK PIERCE,  
First Assistant Secretary."

And this plaintiff further alleges that he is informed and believes, and from his information and belief states that there is a great many other records in the form of letters and communications between the Department of the Interior and the Department of Justice, and between the Defendant in this case and the Department of the Interior and the Department of Justice, which contradict the allegations of the defendant's petition and which the plaintiff can obtain to be introduced in evidence in this case if he is permitted to file the amended petition as herein prayed.

Plaintiff states that at all times from the time this suit was filed until after this case had been submitted for decision by this Court he believed that his deed had been approved without fraud on the part of the defendant, and had no knowledge of the matters and things herein set forth; that if he is permitted to file his amended petition he will take depositions and present in proper and legal form proof of all of the matters set forth in his amended petition.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
Attorneys for Plaintiff.

73      Endorsed:    Filed in the District Court on June 4, 1917.

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74      (Answer to motion of Plaintiff to set aside submission  
   of cause, etc.)

Application has been made in the above entitled action upon the part of the plaintiff asking that the order of submission to set aside and requesting leave to file amended petition.

This case and the case of Bluejacket et al, vs. Ewert and kindred cases, and the matters discussed in the Bluejacket case and the Redeagle case are identical as far as the law and the facts are concerned, and the defendant in this case will not burden the Court with a re-argument of the matters presented in the answer to the application in the Bluejacket case, but hereby adopts the same for the same manner and fashion as if they were set forth in *hoc verba* herein.

It plainly appears from the correspondence attached to the application in this case and the correspondence attached to the application in the Bluejacket case, that Ewert was within his legal rights in purchasing the land in question. This Court held upon the trial of this action it was immaterial whether or not Ewert purchased the land in the name of Franklin Smith, the pleadings admitting such purchase after that fashion, and this Court held the sole question was whether or not

75 Ewert was within his legal rights in making the purchase. It held that he was. At the close of the argument, the Court dismissed the suit as he did in the Bluejacket case, on the ground that neither the application nor the proof thereunder, showed a valid cause of action against the defendant.

At the vehement solicitation of counsel for the defendant, the Court permitted them to file a brief, and the two cases were submitted together upon the same brief. Perhaps counsel should direct the attention of the Court to the fact that the letters and telegrams passing between the Secretary of the Interior and Ira C. Deaver, Superintendent, and the correspondence between the Department of Justice were only such telegrams as had for their purpose the holding up of the deed before delivery until further investigations could be made because of the charges that were made in correspondence received by the Department. The Benham report was made the latter part of November, 1909. Immediately following that as shown by the correspondence, Special Agent Leinen was directed to make and did make an investigation both of the Benham report and of other matters, and the Court will take notice of the fact that after these reports had been in and after the entire matter had been submitted and investigated and re-investigated and the Secretary of the Interior had full knowledge of the fact that Ewert was the purchaser of the Redeagle land as well as the Bluejacket land, the recommendation was made and adhered to by both the Secretary of the Interior and the Attorney General of the

United States, that the deeds be allowed to stand and they were allowed to stand.

76 And now eight years after all of these matters occurred and after all of the facts were before both the Attorney General of the United States and the Secretary of the Interior after the manner and fashion that they can not possibly be brought before this court and that both of these officers have absolutely absolved the defendant from any improper conduct and held he had a legal right to purchase the land in question, and that there was no fraud in connection therewith, the plaintiff in this suit now comes forward and asks that this court re-investigate the matter.

It is submitted that the determination of the Secretary of the Interior in this matter is a finality; that it can not be disturbed; that the Secretary of the Interior is the sole judge whether or not a fraud has been perpetrated upon him or upon the Indian, and when he has determined adversely to such contention, that is final.

It may also be directed to the attention of the Court that all of these matters are subject to the Statute of Limitations set forth in the briefs of the defendant in the Bluejacket matter and in the Redeagle matter, now on file in this court, and by express provision of the Statutes of the State of Oklahoma the suit is barred by laches upon the part of the plaintiff who had full knowledge of all of these matters for seven years the action is barred.

In explanation of the letters attached to the application referring to the approval of the quit claim deed from Grace

77 Sacto Walker to P. A. Ewert, it is only necessary to say that this correspondence took place nearly a year after

Ewert had severed his connection with the government service and that the deed in question was sought for the purpose of quieting the title to the one hundred acre tract in question so that a loan may be placed upon the land. It has absolutely no connection with the transaction herein involved.

It is submitted that the application of the plaintiff should be denied.

PAUL A. EWERT,  
Attorney for defendant.

Endorsed: Filed in the District Court on June 4, 1917.

62 KENDALL, ADMINISTRATOR, ETC., ET AL. VS. EWERT.

79 (Notice of Application of defendant for leave to file an Amended Answer to application to set aside submission of the case, etc.)

To George Redeagle, Plaintiff Above Named, and To A. Scott Thompson And H. W. Currey, His Attorneys of Record:

You Are Hereby Notified, That the defendant in the above named cause, Paul A. Ewert, will in personem, or by counsel, on Monday, July 23, 1917, at ten o'clock A. M. or as soon thereafter as the same may be heard, at the city of Muskogee, State of Oklahoma, make application to the above named Court for leave to file his Amended Answer to plaintiff's application herein to set aside submission of cause, and for leave to amend. A copy of which said Amended Answer is hereunto attached and made a part hereof and hereby served upon you.

Dated this 13th day of July, 1917.

PAUL A. EWERT,  
Defendant.

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I hereby acknowledge receipt of the above Notice of Application to File an amended answer, and further acknowledge service upon me of a copy of said amended answer, by service of a copy of each.

Dated this . . . . day of July, 1917.

H. W. CURREY,  
A. S. THOMPSON,  
Attorneys for Plaintiff.

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80 (Amended answer of defendant to Plaintiff's application to set aside the submission of the case and for leave to file an amended Answer.)

Plaintiff Has Filed His Application To Have Set Aside The Submission Of The Cause And For Leave To Amend. It Should Be Denied For The Following Reasons, To-Wit:

First. The Plaintiff's Application Does Not Exhibit To This Court Any Reason Or Reasons For His Neglect Or Refusal To Produce At The Trial The Evidence Which He Now Submits. All The Evidence Which He Now Offers To Submit Under An Amended Petition Was Evidence Which Was

Available To Him At All Times, Both In The Preparation Of The Petition And In The Trial Of The Suit.

The Case Has Been Tried, The Court Has Ruled Upon The Admissibility Of The Class Of Evidence Which He Now Seeks To Introduce Under An Amended Petition. The Case Has Been Argued Orally, The Oral Arguments Have Been Supported By Briefs. It Would Be Error To Re-Open The  
81 Case And Permit The Plaintiff To Amend His Petition After The Case Had Been Submitted.

Second: All Of The Matters And Things Which Plaintiff Now Offers To Prove By Certain Documentary Evidence, Are Matters And Things Which The Plaintiff In This Suit Cannot Rely Upon In Support Of His Cause, Because The Alleged Fraud Was Not Perpetrated Upon Him, The Matters And Things Alone Pertain To A Pretended Fraud Alleged To Have Been Perpetrated Upon The Secretary Of The Interior Of The United States. They Are Matters Of Which The Plaintiff Cannot Avail Himself.

Third: Under The Rulings Of The Court Already Made, The Documentary Evidence Set Forth In Plaintiff's Application Would Not Be Admissible In Evidence.

Fourth: The Documentary Evidence Which The Plaintiff Offers To Produce, If Permitted To Amend, Shows Upon Its Face Affirmatively In Opposition To His Contention, That Ewert Was Not An Employee Of The Department Of The Interior, Nor Was He Engaged In Indian Affairs, Within The Meaning Of Section 2078 Of The Revised Statutes Of The United States, And That Under The Rulings Of Both The Attorney General Of The United States And Of Secretaries Of The Interior, Ballinger And Fisher, That The Defendant Was Within His Legal Rights In Purchasing The Said Lands. It Is So Expressly Stated In the Correspondence Submitted.

Fifth: It Further Appears From The Face Of The Application That The Attorneys For The Plaintiff Have Been Guilty Not Only Of Gross Fraud Upon The Court In Presenting After A Misleading Fashion Certain Correspondence, But It

Further Appears That They Have Omitted Vital Correspondence Which Was In Their Possession; And It  
82

Further Appears That They Have Presented For The Consideration Of This Court Forged Or Untrue Copies Of The Correspondence Purporting To Be In Their Possession Under The Certificate Of The Department Of The Interior Of The United States, All As Shown By Documentary Evidence Herewith Submitted.



Sixth: None Of The Matters Submitted In The Application Tend To Bring The Subject Matter Of The Action Within The Statute Of Limitations Of The State Of Oklahoma.

Seventh: None Of The Matters Alleged In The Application Take The Plaintiff From Without The Rule That He Is Estopped In Equity From Asking For A Rescission.

Eighth: None Of The Matters Set Forth In The Application Tend To Take The Case From Within The Provisions Of The Exemption Named In Section 2078 Of The Revised Statutes Of The United States, That "No Person Employed In The Indian Department Shall Have Any Interest In Any Trade With The Indians, Except For And On Account Of The United States."

#### First.

Plaintiff's Application Does Not Exhibit To The Court Any Reason Or Reasons For His Neglect Or Refusal To Produce At The Trial The Evidence Which He Now Submits. All The Evidence Which He Now Offers To Submit Under An Amended Petition Was Evidence Which Was Available To Him At All Times, Both In The Preparation Of The Petition And In The Trial Of The Suit.

The Case Has Been Tried, The Court Has Ruled Upon The Admissibility Of The Class Of Evidence Which He Now Seeks To Introduce Under An Amended Petition. The Case Has Been Argued Orally, The Oral Arguments Have Been Supported By Briefs. It Would Be Error To Re-Open The Case And Permit The Plaintiff To Amend His Petition After The Case Had Been Submitted.

83 Plaintiff asks the Court to set aside the submission of the cause and grant him leave to file an amended petition, upon the ground of certain correspondence which now is and has been in the office of the Secretary of the Interior and the Attorney General of the United States, presumably since the dates upon which they were written. They are official files. The plaintiff offers no excuse to the Court for his lack of diligence, or the neglect and failure upon his part to produce and have the said letters at the trial of the case. His opportunity for procuring the letters was as favorable at the time he drew his petition as it now is, and all the evidence which he now seeks to submit is evidence which he could have procured by the exercise of reasonable diligence at the time the case was tried. He should have known what he was doing at the time his petition was prepared, and he had an abundance

of time, months of time, after the petition was filed and after the defendant's answer was filed, within which to procure all the evidence which he now asks the Court to permit him to introduce. The evidence is not newly discovered evidence, because it has always been available.

The plaintiff has been guilty of such laches as warrants the Court in the exercise of its discretion and good judgment in denying his application to practically re-open the case and permit him to file an amended petition.

The case has been tried. At the time of its trial, the Court ruled upon the admissibility of certain evidence which he now again asks the Court to introduce after getting leave to file an amended petition. This Court ruled upon the admissibility of the character of the evidence which he now seeks to introduce. The Court held that the sole question at issue in the case was whether or not Ewert was employed in Indian affairs, and if he was employed in Indian affairs, was the character of the transaction such as is prohibited by Section 2078 of the Revised Statutes of the United States?

The Court has ruled that it was immaterial whether or not Ewert purchased the Redeagle lands in the name of Franklin Smith, or in his own name. In making that ruling, it was presumed that the Secretary had no knowledge of the purchase of the land by Ewert: That Ewert had a right to purchase the land,—if he had any legal right at all,—in the name of whomsoever he desired. Of what avail would it be to the plaintiff, if the case were re-opened, if the evidence which he claims to have discovered, is inadmissible under the rulings of the Court?

In any event, it is the opinion of counsel that the discretion of the Court is not so broad as to permit this case, which has already been tried out upon the pleadings and which has been already argued and upon which briefs have been submitted and upon which nothing remains to be done except to file the opinion of the Court, to be now re-opened. It is as if the case had been tried and submitted to the jury and the jury was out and was preparing its verdict and had not yet written it.

Upon this ground alone, the application should be denied.

## Second.

All Of The Matters And Things Which Plaintiffs Now  
 Offers To Prove By Certain Documentary Evidence,  
 85 Are Matters And Things Which The Plaintiff In This  
 Suit Cannot Rely Upon In Support Of His Cause, Be-  
 cause The Alleged Fraud Was Not Perpetrated Upon Him,  
 The Matters And Things Alone Pertain To A Pretended Fraud  
 Alleged To Have Been Perpetrated Upon The Secretary Of  
 The Interior Of The United States. They Are Matters Of  
 Which The Plaintiff Cannot Avail Himself.

Under the above point counsel desires to direct the attention of the Court to the fact that all of the correspondence which plaintiff offers as the ground for asking to have the submission set aside and a new trial granted upon an amended petition, are matters that pertain purely to what he claims to have been a lack of information upon the part of the Secretary of the Interior concerning Ewert's prior purchase of the Red-eagle land through Franklin Smith, at the time the Bluejacket land was purchased.

Not mentioning at this point the fraud which the attorneys for the plaintiff are practicing upon the Court in withholding from the Court certain of the correspondence which passed between the Secretary of the Interior and the Attorney General, counsel shows to the Court that upon the face of his application which must govern and control, the pretended fraud alleged to have been perpetrated and the pretended facts which are alleged to have been concealed, are matters, which, if they gave anyone a right of action to set aside the deed, would give the Secretary of the Interior such a right, but by no possible construction could they give a right to the plaintiffs to have the deed set aside. No fraud was practiced upon him. The matters which he alleges in the application, are matters of concern only to the Secretary of the Interior, and it is submitted  
 86 that from the correspondence which the plaintiff himself attaches to his application and the correspondence which he has submitted and that which is herewith submitted, it affirmatively appears that the Attorney General of the United States had full knowledge of the fact that both purchases were made by the defendant, and that he had knowledge that the purchase of the Redeagle land in the name of Franklin Smith was made by Ewert, at the time of and prior to the approval of the Bluejacket deed. The testimony shows it and the correspondence herewith submitted shows it.

It further appears from the correspondence attached to the plaintiff's application and that herewith submitted, that the Secretary of the Interior, Ballinger, if he was not informed of the prior purchase of the Redeagle land by Ewert, at the time he approved the Bluejacket deed, learned of it shortly thereafter and had full knowledge of the purchase by Ewert of both tracts of land, and with full knowledge, as a matter of discretion vested in him as the Secretary of the Interior of the United States, refused to ask him (Ewert) to reconvey the lands, and refused to bring an action to have the deed set aside.

It further appears that the successor of Mr. Ballinger, Secretary of the Interior, Walter Fisher, had full knowledge of both of these transactions, that with this full knowledge, he acquiesced in them and refused to institute suit to have either one or both of the deeds set aside, and refused to ask Ewert to re-deed the lands.

It further appears from the correspondence which the plaintiff himself submits and from further correspondence herewith submitted, that the Attorney General of the United States and Secretary of the Interior Ballinger, and later Secretary of the Interior Fisher, all agreed, and so stated, that "Ewert Was Within His Legal Rights In Purchasing The Said Lands." This, after all of the facts which plaintiff claims they did not know in the first instance, had been directed to their attention by the investigation of Special Agent Lienen in March, 1910.

The correspondence further discloses that at the conclusion of all of these investigations the Department was of the opinion that no fraud had been practiced upon it; that the lands were sold at their approximate value; that there was not, and could not have been any collusion between the Indian Agent, Deaver, and the defendant Ewert, because the lands were appraised and offered for sale numerous times, many months before Ewert received his appointment.

None of the matters and things alleged in the application deal or pretend to deal with any pretended fraud upon the plaintiffs in this case. It appears that the lands were sold under the direction of the Secretary of the Interior of the United States; it appears that the appraisement was made many months before the appointment of the defendant, Ewert; it appears that the appraised value was acceptable to the plaintiff, who was selling the land, and that he accepted the consideration, and for the consideration signed the deed, and

he is now estopped, and cannot avail himself of any of the things and matters alleged in the application. They are all immaterial and inadmissible as evidence, and for this reason too, the application should be denied.

88

Third.

Under The Rulings Of The Court Already Made, The Documentary Evidence Set Forth In Plaintiffs Application Would Not Be Admissible In Evidence.

The argument under this point has partially been made in the [preceeding] subdivision. The Court has squarely ruled that as far as the sale of the lands in question is concerned, it is immaterial whether Ewert purchased the lands in his own name or in the name of someone else, and rule that if Ewert had a right to purchase the lands as a matter of law, that he could purchase them through himself or as Trustee. Such conduct would not be a fraud upon the part of the plaintiff who was offering the lands for sale.

The lands were in due form of law appraised under the rules and regulations of the Secretary of the Interior; guardians were appointed for the minors; due application was made to the Court; an order of Court was made directing that the sale should be made; the sale then proceeded and was in all things regular and proper, [beind] conducted in accordance with the laws of the United States and the rules and regulations promulgated thereunder by the Secretary of the Interior; the plaintiff received the full amount of the consideration; he had a right to refuse to sign the deed if he did not think it was ample, the rules and regulations provide that. He did not do it. He accepted the consideration, signed the deed, delivered it to the Secretary of the Interior, who approved it, and the money was paid over to the plaintiff. No fraud was practiced upon him. The sale was regular in all respects.

89

If the Court should permit the amendment to be made, the evidence which plaintiff claims he will submit, would be clearly inadmissible, under the rulings of the Court.

None of the acts or things complained of are matters of which the plaintiff could avail himself in a suit in equity to set aside the deed, for no fraud was practiced upon him. If there ever was a right of action, that right vested solely in the Secretary of the Interior of the United States. Two Secretaries of the Interior and one Attorney General declined to exercise that right, upon the ground that no fraud had been

perpetrated, and this after they had acquired a knowledge of all of the facts relative to both transactions after two investigations made by specially appointed investigators because of complaints made to them by certain grafters whom the Government was at that time prosecuting, the suits being brought by the defendant. The correspondence submitted shows that fact.

For this reason too, the application should be denied.

#### Fourth.

The Documentary Evidence Which The Plaintiff Offers To Produce, If Permitted To Amend, Shows Upon Its Face Affirmatively In Opposition To His Contention That Ewert Was Not An Employee Of The Department Of The Interior, Nor Was He Engaged In Indian Affairs, Within The Meaning Of Section 20780F Of The Revised Statutes Of The United States, And That Under The Rulings Of Both The Attorney General Of The United States And Of Secretaries Of The Interior, Ballinger And Fisher, That The Defendant Was Within His Legal Rights In Purchasing Said Lands. It Is So Expressly Stated In The Correspondence Submitted.

90 On page 5 of the plaintiff's application in the Bluejacket case, plaintiffs set forth a certified copy of an official letter purporting to have been signed by the Commissioner of Indian Affairs. The letter is of date of July 19, 1909. That letter contains the following statement:

"The case (the sale of the Bluejacket land) has been carefully investigated and it appears from the papers in the case that Mr. Ewert Acted Within The Law and there is no suspicion of fraud in the transaction. The appraised value of the land described in the deed is \$4900. The tract has been advertised and readvertised a number of times, but in each case the bids did not equal the appraisement."

On page 2 of the plaintiff's application in the Redeagle case, there appears a copy of a letter written under date of June 26, 1909, purporting to have been signed by Frank Pierce, First Assistant Secretary, which states:

"Mr. Ewert Is An Employee Of Your Department, Detailed By The Department Of Justice To Examine The Legality Of Titles Of Quapaw Lands."

Again, on page 9 of plaintiff's application in the Redeagle case appears a letter purporting to have been written under

date of November 19, 1909, by Frank Pierce, Assistant Secretary of the Interior, addressed to S. M. Brosius, Agent of the Indian Rights Association, in which appears the following statement:

"Mr. Ewert being an employee of the Department of Justice, a copy of your letter has been sent to the Attorney-General for his information."

Again, on page 13, of the plaintiff's application in the Red-eagle case, appears a copy of a letter dated December 21, 1909, written by George W. Wickersham, Attorney General, to R. A. Ballinger, Secretary of the Interior, in which appears the following:

91 "It is true that he (Ewert) bought the land for \$5,000, while Mr. Benham reports its actual value at the time of its purchase at \$15,000, but it also appears that the valuation was made two years before Mr. Ewert went to Oklahoma, and that the property was twice previously advertised for sale and each time the bidder offered less than the appraised value. These are the only additional facts learned since the deed was presented for approval last June. At That Time I Told Mr. Ewert That I Saw No Legal Reason Why He Should Not Purchase The Land In Question \* \* \* \* \* I have no doubt, however, that if I should request it, he would reconvey the property to the Government upon receiving back his purchase money, and if you think it desirable to make that request of him, I will do so; although I should prefer not to, in view of the action taken in June and above referred to."

This letter was dated and written subsequent to the report of Special Agent Benham, dated November 21, 1909, the original of which was on file in the office of the Secretary of the Interior of the United States, and plaintiff's counsel in Washington had an opportunity to see it, and knew of its existence. In that report, Benham deals not only with the purchase of the Bluejacket land, but with the purchase of the Redeagle land by Ewert, so that the Department at that time had full knowledge of the purchase by Ewert of the Redeagle land.

Again, on page 3 and 4 of the plaintiff's application in the Redeagle case, appears a certain official letter dated June 8, 1911, addressed by Walter L. Fisher, Secretary of the Interior, to Congressman Davenport, wherein the Honorable Secretary of the Interior states:

"Considerable correspondence passed between the Department and the Department of Justice regarding the matter (the



purchase of the Bluejacket and Redeagle lands by Ewert, mentioned in the Davenport letter to the Secretary), which was investigated specially by a Special Agent of the Department of Justice and also by an Inspector of this Department, without eliciting anything which would warrant the institution of a suit to set aside the deed.

"In this connection it may be observed that Mr. Ewert is not an employee of the Indian Office, And In Strictness Was Within His Legal Rights In Bidding On The Land In Question."

92 This letter is dated June 8, 1911, and was subsequent to the report of Special Agent Benham dated November 20, 1909, and Ewert's reply thereto dated December 22, 1909, and the report of Special Agent Leinen dated March 22, 1909, in all of which reports it is especially directed to the attention of the Attorney General and the Secretary of the Interior the matter of the purchase of the Redeagle land by Paul A. Ewert in the name of Franklin Smith.

It may be further said in explanation as relevant in the Bluejacket matter, that counsel for the plaintiffs failed to set up to their application a certain certified copy of a letter which the defendant believes to be in their possession, dated June 26, 1909, written to the Commissioner of Indian Affairs, and signed by Frank Pierce. As Assistant Secretary of the Interior, reading as follows:

"Land-Sales

40233-1909

E S S

Inherited Indian land  
deed to Paul A. Ewert.

6/26/09

The Attorney General,

Sir:

On May 1, 1909, the Superintendent of the Quapaw Agency forwarded an inherited Indian land deed executed by the heirs of Charles Bluejacket, conveying to Paul A. Ewert, for \$5000, 200 acres of land in Ottawa County, Oklahoma.

Mr. Ewert is an employee of your Department, detailed by the Department of Justice to examine the legality of titles of Quapaw lands.

The matter is referred for your consideration, and the deed will be held in the Indian Office pending your advice.

Very respectfully,

(sgd) FRANK PIERCE,  
First Assistant Secretary.

E. H.-19  
2462''

- 93 A certified copy of the above letter is in the hands of the defendant and will be submitted to the Court.

Plaintiff further, as defendant believes, with a deliberate intent of misleading this Court, failed to set up in his application the report of Special Agent Benham of the Department of Justice, which was made by direction of the Department of Justice under date of November 21, 1909, wherein Benham reports upon both the purchase of the Bluejacket land, and on page 20 thereof, deals specifically with the purchase of the Redeagle land by Ewert. A certified copy of that report is in the hands of the defendant, and if the Court directs, will be filed herewith.

Neither do the plaintiffs in their said applications, in any wise refer to the reply of Ewert made to that report under date of December 22, 1909, wherein he deals specifically with the purchase of both of these tracts of land, and wherein on pages 12 and 13 appears Ewert's statement relative to these purchases. A certified copy of this report is in the hands of the defendant and will be submitted to the Court if desired.

Defendant further shows to the Court that the Department after the Benham report was submitted, was convinced that Benham had been misled in many respects and had in fact, been shown the wrong tract of land by the persons from whom he got his information, to-wit: The defendants in a number of suits which the Government through Paul A. Ewert, had instituted against said defendants. Counsel for the plaintiff had access to the Leinen report, which was submitted to the Department under date of March 26, 1910; they had a special attorney in Washington examining all of the files and records, and defendant believes, and so states, that they have a certified copy of that report in their possession.

- 94 The Leinen report in this matter, and in other matters covers seventy-three pages of typewritten matter. The result of the investigation as summarized by him, appears on

pages 23 to 25, and taken from the certified copy thereof now in the possession of the defendant, reads as follows:

(pp, 24-25)

"1st. I am fully satisfied that Superintendent Ira C. Deaver is honest and upright and has been conducting the affairs of the Quapaw Agency in an honest, fair and impartial manner without collusion with Assistant Attorney General Paul A. Ewert, Horace B. Durant, former Superintendent of the Quapaw Agency, or any other person or corporation;

2nd. That the lands purchased by Mr. Paul A. Ewert, Special Assistant Attorney General, have no particular value as mining lands and that he paid substantially the market value of said lands at the time he purchased same through Superintendent Ira C. Deaver, at open market sale, under competitive sealed bids;

3rd. That there was no collusion in the purchase of said lands through said Agency, the same having been appraised prior to Mr. Ewert's coming to Oklahoma, and advertised and re-advertised for a period of some nine months prior to sale;

4th. The complaints made by Mr. E. T. McCarthy, of Baxter Springs, Kansas, to Senator Joseph L. Bristow and to the Reverend William H. Ketchum, Director of the Bureau of Catholic Indian Missions, Washington, D. C., and by them referred to this Department, are not justified by the facts and it is doubtful if such charges are made in good faith, with good intentions and in the interest of the Indians as set forth."

Relative to the purchase of the Redeagle land, which counsel for the plaintiff expressly states in his application was not known to the Department for several years after the purchase thereof, Mr. Leinen in his report says. (pp.60-61-62) 62)

"The other tract of land purchased by Mr. Ewert in the name of Franklin Smith is the east half of the southeast quarter and the east half of the southwest quarter of the Southeast quarter of section twenty-one, township twenty-nine range twenty-three east of the Indian Meridian, containing one hundred acres. This land is located one mile north and one mile west of the town of Quapaw instead of about one mile west as stated by Mr. Benham in his report. He says, "It is a beautiful tract of perfectly level farming land and while it is in the mineral belt, it has never been developed. One mile to

95 the west there is a large asphalt bed, considered very valuable." I am inclined to believe that Mr. Benham did not see the right tract of land, the fact being that the land is badly cut with ravines and gulches. About one-third of said tract is unfit for agricultural purposes by reason of deep ravines and draws which decrease the value of the land very much. The soil is very light and it is a poor farming tract, only about two-thirds of same can be farmed. There is a three year lease on it which prevents the present owner, Mr. Ewert, from using the land, although he has to pay the taxes on same. This land is not in the mineral belt. There is no asphalt bed in the vicinity. The land was purchased for thirteen dollars per acre. It is worth now possibly from fifteen to seventeen dollars an acre and I very much doubt if it could be sold for the latter named figure, which is certainly all it is worth at the present time for farming purposes, and that is its only value.

"These are the only two tracts of land purchased by Mr. Ewert in this country. Of course, it was indiscreet in him and a matter of poor judgment that he purchased these Indian lands, but I believe he did so with honest intentions and without any idea of doing wrong, they being advertised at public sale and sold to the highest bidder above the appraisement, and there certainly being no collusion between him and Mr. Deaver, the Superintendent of the Quapaw Indian Agency. He simply gave these people whom he is suing for defrauding the Indians an opportunity to criticise and make much of his indiscretion."

The above is an extract from the certified copy of the report in the hands of the defendants, and will be submitted to the Court if requested.

Counsel for the plaintiff further fail to get up in their pleadings a certified copy of the letter now in the possession of the defendant, of which said counsel had knowledge, because found in the files, to-wit: The letter of July 2, 1909, addressed by Wade H. Ellis, acting as Attorney General, to Honorable Frank Pierce, Acting Secretary of the Interior, in which the acting Attorney General says:

"On receiving your letter of the 26th ult. I communicated at once with Mr. Paul A. Ewert, who was here and have received from him an explanation with respect to the purchase of the land described in the deed referred to in your letter, which, it

96 seems to me frees him from any offense in the trans-  
action."

In explanation of the above, defendant desires to state that he knows of his own knowledge that counsel for the plaintiff employed an especial attorney at Washington, D. C. to examine all of these files, and that the said attorney did examine all of said files; that all of the letters above mentioned are on file in said files and a part thereof, and defendant charges counsel for the plaintiff with bad faith towards the Court, and with personal dereliction, if not dishonesty, in the preparation of their said application.

And with the above explanation as to the knowledge within the hands of the Secretary of the Interior and the Attorney General, counsel will make no answer to the several telegrams and letters set up in the application, for the reason that the supposed argument presented by them absolutely falls. The Bluejacket deed never was disapproved. Certain letters appear to have been written by subordinates in the Department, who signed the name of their superior officers, but properly initialled the communications. When the deed was finally presented to the Commissioner of Indian Affairs and the Secretary of the Interior, it was approved by both officials after the fullest investigation.

In the Bluejacket application, counsel set up certain letters written in May, 1913, by the defendant to the Department of the Interior, for the purpose of making it appear that the Secretary of the Interior did not know of the purchase of the Redeagle land, and this in spite of the fact that the purchase of the said Redeagle land had been investigated by Benham and reported, and re-investigated by Inspector Leinen and reported and that counsel had in their possession, or  
97 could have obtained copies of said reports, because they are on file with the general file from which the other letters were procured.

If this be true, deliberate fraud was practiced upon the Court and the matter is dealt with under the subsequent subdivisions hereof.

#### Fifth.

It Further Appears From The Face Of The Application That The Attorneys For The Plaintiff Have Been Guilty Not Only Of Gross Fraud Upon The Court In Presenting After A Misleading Fashion Certain Correspondence, But It Further Appears That They Have Omitted Vital Correspondence

Which Was In Their Possession; And It Further Appears That They Have Presented For The Consideration Of This Court Forged Or Untrue Copies Of The Correspondence Purporting To Be In Their Possession Under The Certificate Of The Department Of The Interior Of The United States, All As Shown By Documentary Evidence Herewith Submitted.

The defendant under the Fourth subdivision hereof, has already directed the attention of the Court to matters coming under this subdivision, and defendant charges and will show to the Court that the attorneys for the plaintiffs for months had an attorney employed in Washington, D. C.; that the said attorney had access to all of the files containing all of the correspondence and all of the reports hereinbefore referred to. In order to mislead the Court so that it might grant said application, they have presented to the Court certain letters which they thought would be beneficial and concealed from the Court other correspondence which is found in the same Government file in Washington, as are the letters which they have quoted from, all set forth in full in said files; and the attorney for defendant further directs the attention of the Court to the fact that the letters which they set forth in full referring to the Benham report and to the Leinen report, in which are found lengthy discussions of the purchase by Ewert of the Redeagle land, show that these reports were made prior to some of the letters appearing in their own application; Yet, notwithstanding this fact, plaintiffs in their application in the Bluejacket matter set up certain letters from Paul A. Ewert to the Interior Department, the same being found on pages 10, 11, 12, 13, for the purpose of misleading the Court and making it appear that even as late as the date named the Department of the Interior and the Department of Justice did not know that Ewert was the purchaser of the Redeagle land. Counsel A. Scott Thompson in open Court stated that to be the fact, at McAlester, Oklahoma, on the last rule day of said Court. The defendant in response thereto, stated to the Court that this was an untruth and was known to be an untruth by counsel for the plaintiffs, and he further said that proof would be made to the effect that counsel in their application were presenting untrue copies, if not forged copies of purported correspondence emanating from the office of the Secretary of the Interior of the United States. The first charge has already been directed to the attention of this Court, the second charge will now be considered :

## Caught With the Goods.

In the opening paragraph in the application in the Blue-jacket matter, at the bottom of page 1, counsel state:

99 "and the said deed, referring to the Bluejacket deed) was disapproved by the Indian Commissioner, and the then Secretary of the Interior."

In order to substantiate that charge, they set forth on page 5 of said application, a certain letter dated July 19, 1909. It appears that the letter is signed "R. G. Valentine, Commissioner." but underneath the signature appear the initials "E. P. H.", apparently one of the Clerk's. The letter then closes as follows:

"The within deed is disapproved and is returned.

OGP-15  
3173

FRANK PIERCE,  
First Assistant Secretary."

As a matter of fact, the letter in question is nothing more than a recommendation upon the part of some Clerk in the office of the then Commissioner of Indian Affairs recommending that the deed be disapproved. The letter is not signed by Valentine. Apparently it is initialled "E. P. H." It will also be noticed that at the left thereof appear the letters "OG.P" indicating that one of the then law clerks, O. G. Pollock, had added at the bottom of the letter the words, "The within deed is disapproved and is returned.

FRANK PIERCE,  
First Assistant Secretary."

The deed in fact, was not disapproved by Frank Pierce, First Assistant Secretary. When the communication came to him, he did not concur in the recommendation of the Clerk from the Commissioner's office, but with a big blue pencil crossed out the recommendation of disapproval and underneath that attached his initial "F. P." Mind you, this was the letter, not the deed. The letter states that all the papers  
100 were enclosed. That is all that happened. The deed was not disapproved by Frank Pierce and never was disapproved by him. Yet, in order to deceive the Court into believing that Assistant Secretary Pierce disapproved the deed itself, they left off from the copy attached to their application the crossing out of the recommendation for disapproval by Frank Pierce, together with his initial "F. P."

It alone is all the more inexcusable and all the more a forgery because the attorneys for the plaintiff have in their



possession photographic copies of said letter which shows all of the above things. The defendant has in his possession and will submit to the Court upon this hearing, a certified copy of the said letter, showing the above charges to be true.

The defendant further shows to the Court that the notice of the application in this matter was served upon the defendant only a few days before the rule day at McAlester, and counsel did not have time to verify the suspicions then stated as to the falsity of the matters set forth in said application, but he immediately transmitted to the office of the Commissioner of Indian Affairs a copy of plaintiffs application, whereupon the Commissioner wrote to A. Scott Thompson, plaintiffs' attorney, as follows:

" Department of the Interior Office of Indian Affairs.  
Washington

Land  
WRL.

Jun 14 1917

Mr. A. Scott Thompson,  
Miami, Oklahoma.

Sir:

It has come to the attention of the Office that you, as attorney for the plaintiffs in the action entitled George  
101 Red Eagle, plaintiff, versus Paul A. Ewert, defendant, in the District Court of the United States for the Eastern District of Oklahoma, have filed a letter, certified by this Office, dated July 19, 1909, signed by R. G. Valentine, as Commissioner, and approved by Frank Pierce, as First Assistant Secretary, without qualification.

The certified copy of the letter above mentioned, if it was not a photographic copy, should have shown thereon the following notation:

This letter shows the signature of Frank Pierce, First Assistant Secretary, below the disapproval; but the signature is crossed out in blue pencil over the initials F. P., also in blue pencil.

You are requested to return at once the certified copy above referred to and on its receipt the Office will immediately have a photographic copy made and duly certified of the letter of July 10, 1909 and forwarded to you as a substitute for the certified copy heretofore furnished.

It is requested that you give this matter your special and early attention.

Respectfully,

E. B. MERRITT,

Assistant Commissioner.

6-REP-12."

In answer to the above letter, counsel wrote to the Commissioner of Indian Affairs as follows:

"June 22, 1917.

The Commissioner of Indian Affairs,

Sir:

I have your letter of June 14, relative to a certain letter which I had certified by your office written by R. G. Valentine as Commissioner, to the Secretary of the Interior, regarding your approval of a certain deed in which Mr. Paul A. Ewert is grantee, said letter being dated July 19, 1909. You ask me to return the letter that I have. I am not returning this letter for the reason that there seems to be no discrepancy in the original, as you described it, and the copy I have as it is a photographic copy. I have examined the copy in my possession and find it to be practically the same as you describe the original to be. It is signed by Frank Pierce, as 1st Asst. Secretary and there are marks over the signature, but of course, the photographic copy does not show the color, and below the signature are the initials "F.P." I see no good  
102 reason for returning this certified copy inasmuch as it conforms to what you describe the original to be, unless you can give me some further reason for doing so. I do not wish to be impertinent, but do not think, from my explanation, that you should request it.

On the other hand, I have not filed the letter as you seem to be informed, but did file a motion to re-open the case and in the motion set out certain letters, deeming it necessary to show from correspondence between Ewert, the Commissioner, and the Attorney-General that Ewert was in fact the purchaser of the Redeagle land.

As to some of these letters, we merely set out part of them to show the court that we have substantial reasons for re-opening the case. The copy set forth in the motion did not show the pencil marks. The motion has not been presented to the court, as you suggest. We are informing the court of the nature of the correspondence, and will show him the certified photo copy. If the case is re-opened, we expect

to make depositions and get photo copies of the original papers in the Department. Unless I hear from you I will take this as a satisfactory explanation and that you do not require return of the certified copy, which conforms to the original as you describe it to me.

A. SCOTT THOMPSON."

The above appear from certified copies of said letters now in possession of counsel for the defendant, and same will be produced in Court.

Further comment would seem to be unnecessary.

Counsel not only falsely state that the deed was disapproved by the Secretary of the Interior, whereas, in truth and in fact, it never was disapproved, but even misleads the Court into believing that Frank Pierce himself recommended the disapproval of the deed by the letter in question. As a matter of fact, he crossed out the recommendation of disapproval with a blue pencil when it came to him.

Sixth.

None Of The Matters Submitted In The Application Tend To Bring The Subject Matter Of The Action Within The Statute Of Limitations Of The State Of Oklahoma.

103 None of the matters and things alleged in the application, if true, would take the case from without the statute of Limitations. The action is one for rescission upon ground of fraud, as shown by the petition, and comes under Sub-division 3, of Section 4657, of the Revised Laws of Oklahoma for 1910, and it is held by numerous decisions of the Supreme Court that such an action must be brought within two years after a fraud is discovered. More than eight years have now passed since the sale was made, and the action is barred.

Campbell vs. Dick, 157 Pac., 1062;

Webb vs. Logan, 150 Pac., 116;

New vs. Smith, 119 Pac., 380;

Dodson vs. Middleton, 135 Pac., 368;

Maddox vs. Smith, 148 Pac., 842.

### Seventh.

None Of The Matters Alleged In The Application Take The Plaintiff From Without The Rule That He Is Estopped In Equity From Asking For A Rescission.

None of the matters alleged in the application, if admitted, take the matter from without the rule of estoppel which defendant has invoked as against the conduct of the plaintiff. Eight years have passed. Plaintiff received the full consideration; he has not returned or offered to return it, and for the first time, he now makes complaint. He is now estopped in equity from asking for a rescission.

### Eighth.

None Of The Matters Set Forth In The Application Tend To Take The Case From Within The Provisions Of The Exemption Named In Section 2078 Of The Revised Statutes Of The United States, That "No Person Employed In  
104 The Indian Department Shall Have Any Interest In Any Trade With The Indians, Except For And On Account Of The United States.

It is respectfully submitted that it plainly appears from the pleadings and the proof and from the application made in the above matter, that the purchase in question was made by the defendant through the Secretary of the Interior of the United States; that he received the purchase price and held it in trust for allottees, the plaintiff, disbursing it under the rules of the Department of the Interior. The sale was therefore one which comes within the proviso contained in Section 2078 of the Revised Statutes of the United States, to-wit:

"No person employed in the Indian Department shall have any interest in any trade with the Indians, except for and on account of the United States."

It is respectfully submitted that the application of the plaintiffs in the above matter is not made in good faith, but extremely bad faith, with the intention of misleading this Court and getting into the record before the Appellate Court certain letters for the purpose of prejudicing the Court against

this defendant. Further comment on their conduct at this time is unnecessary.

Respectfully submitted.

PAUL A. EWERT, Deft.  
405-407 Frisco Bldg., Joplin, Mo.

W. H. KORNEGAY,  
Vinita, Oklahoma,  
Attorneys for Defendant

Endorsed: Filed in the District Court on July 20, 1917.

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- 105 (Order, July 23, 1917, submitting Motion to re-open case.)

Now on this 23rd day of July, 1917, it is ordered that the motion of Complainant herein to set aside the order heretofore entered submitting this cause, be and the same is now taken under advisement.

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- 106 (Order, March 4, 1918, overruling plaintiff's Motion to re-open case.)

This cause was heretofore on March the 15th, 1917, consolidated for trial with the case of Carris Bluejacket, et al. against Paul A. Ewert, this defendant, Equity Number 2299, and the evidence taken in said cause, Equity Number 2299, considered as the evidence in this case and:

Now on this 4th day of March, 1918, and before the entry of final decree herein, comes on for consideration the motion of the plaintiff filed herein June 4th, 1917, to set aside the order of submission of this case theretofore entered and to have this cause reopened and to permit plaintiff to amend the petition herein and offer further evidence in support thereof, which motion with exemplification by certified copies of the letters and correspondence set forth referred to and described in the motion was presented to the court, orally argued by counsel for plaintiff and defendant and by the court taken under advisement, and the court now being advised in the premises:

It is ordered that said motion to reopen this cause and permit plaintiff to amend the petition and offer further evidence in support thereof, be and it is hereby, overruled. To which the plaintiff asks and is allowed exceptions.

RALPH E. CAMPBELL,  
Judge.

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107 (Decree of the District Court, March 4, 1918.)

Now on this 4th day of March, 1918, this cause coming on for further hearing and signing and entry of final decree herein pursuant to trial had on March 15, 1917 plaintiff and defendant each then appearing in person and by counsel, whereupon both parties in their order produced their evidence and rested, and after argument of counsel the cause was taken under advisement by the court upon briefs of counsel thereafter filed and considered by the court, and the court now being fully advised in the premises, finds the issues for the defendant and that the plaintiff is not entitled to the recovery prayed in the bill.

It is therefore, ordered, adjudged and decreed by the court that the plaintiff take nothing by this action; that his bill be dismissed, and that the defendant have judgment against the plaintiff for his costs herein taxed in the sum of \$. . . . . To all of which final order, judgment and decree the plaintiff asks and is allowed his exceptions.

RALPH E. CAMPBELL,  
Judge.

109 (Statement of the Evidence.)

(Filed in the U. S. District Court, November, 19, 1918.)

Now, on This Fifteenth Day of March, 1917, at Vinita, Within the Eastern District of Oklahoma, Came on the Above Entitled and Numbered Cause for Trial Before the Honorable Ralph E. Campbell, Judge, Presiding, and Thereupon Appeared Upon Behalf of Complainant, A. Scott Thompson, Esq., and H. W. Curry, Esq., and Appeared on Behalf of the Defendant, Paul A. Ewert, Esq., and W. H. Kornegay, Esq., and Thereupon Evidence Herein Was Heard as Follows:

On Behalf of the Complainant.

J. W. ABRAMS, being first duly sworn, under oath testifies as follows:

Direct Examination

By Mr. Thompson:

Q. Mr. Abrams, where do you live?

A. About a mile and a half northeast of Clarksville, Oklahoma.

Q. In Ottawa County?

A. In Ottawa County.

Q. Are you a Quapaw Indian?

A. Carried on the Quapaw rolls.

Q. How long have you lived in what is now Ottawa County, Oklahoma?

A. I came there October 10, 1887—about 29 years.

Q. Have you occupied any official position with the tribe to which you belong?

A. I was clerk of the Quapaw Council.

Q. What if anything, did you do toward the allotting of the Quapaw land?

A. I was one of the three on the allotting committee.

Q. And that was done in what year?

110 A. 93 and 4, and I think it was finished in 93 or 94, we finished off.

Q. You mean 1893 and 1894?

A. Yes sir.

Q. What did you do, if anything with reference to securing legislation towards the allotting of the Quapaw land?

A. I was delegate from the Quapaw Tribe of Indians and represented them; was sent both to Washington City, to—

The Court: Now what do you offer that for?

Mr. Thompson: Just to show his official position with the Quapaw tribe.

The Court: All right.

Q. What has been your business, Mr. Abrams, for the last ten or fifteen years?

A. The first two years I farmed and had quite a lot of stock; later on I did a great deal of writing; was Notary Public for four years and then I went into mining.

Q. Did you ever deal in hay and farm leases in Ottawa County?

A. Oh, yes, I had, I think, four or five thousand acres including this land you are talking about.

Q. Do you know the location of the land now in controversy, or the land sold by George Redeagle to Franklin M. Smith?

A. I know that Huldo Blackhawk land.

Q. And do you know the part of it that was deeded by Redeagle to Mr. Smith and afterwards deeded to Mr. Ewert, now in controversy?

A. Of course I have heard of it and have seen the deed.

Q. Do you know where the land is?

A. Yes, sir, I do.

Q. Have you been over the land?



A. Yes, sir.

Q. How far is it from where you live?

A. My recollection is Section 21, probably 5 miles from where I live in a straight line.

Q. Are you familiar with the quality of the soil, and how the land lays?

A. Yes, sir.

Q. In reference to its farming value? A. Yes, sir.

Q. And are you familiar with the cash rental values of lands of that character in that community?

111 A. I haven't had anything to do with anything over in there for a half dozen years. The land that I have handled has been east; southeast of there. Our rentals down there for hay land have been from one to—

Mr. Ewert: Objected to.

The Court: Objection sustained.

Q. Are you able to state, Mr. Abrams, from your business there what the cash rental would be per year and per acre of this particular land for a period of a year since 1909?

The Court: Are you able to state that?

A. It has varied so—

The Court: You can answer the question by yes or no state the cash rental; for the years that you are able to state that; you may say so.

A. It has been from—

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: You can answer the question by yes or no whether you know the rental value of this particular land about which you have been interrogated.

A. Yes.

Q. State, Mr. Abrams, what the cash rental would be.

Mr. Ewert: Just a moment—

The Court: At what time?

Q. Since the year 1909?

Mr. Ewert: May I interrogate the witness to see whether or not he knows?

The Court: You may cross-examine him later.

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial; the witness not having qualified himself, having stated that he knew what the values of the land five miles from there—the rental value, but didn't know what they were in this neighborhood.

The Court: Overruled, exception noted.

Q. Go ahead and state what the rental values are in cash since the year 1909 for this land?

A. Worth from one to two dollars an acre. One year I think it was worth two dollars and a half; hay was very high.

Q. Was this land hay land? A. Yes, sir.

Q. All of it?

112 A. Yes sir. A strip or two ran through it—

Mr. Curry: Your, Honor, we ask leave to amend our Petition by interlineation, by inserting between the word "interior",—I think in the fourth line from the bottom of the Petition on Page 4, the following "That just before the sale of said land, the plaintiff was told in the presence of the defendant that his land was worth \$25 per acre, and thereafter the defendant told the plaintiff he was a fool for thinking of getting that amount or, words to that effect, and that his land was not worth more than \$12 or \$13 per acre."

Mr. Ewert: We object to that, Your Honor, at this time.

The Court: The amendment will not be permitted at this time because it is a departure from the theory of the Petition heretofore filed, in the midst of the trial. Take your exemption.

Mr. Thompson: We except.

#### Cross-Examination

By Mr. Ewert:

Q. Mr. Abrams, have you ever or do you know what the land was renting for in the neighborhood of this land in 1910?

A. I think that was a poor year.

Q. Is it a fact that that land was being rented in there for 35 to 50 cents an acre for hay?

A. I don't know of any that low.

Q. Do you know what any of that land in there rented for during that year in that neighborhood?

A. Yes.

Q. What land?

A. The Douthat land laying almost adjacent to it.

Q. Who rented that land?

A. I am very sure that I had it myself, rented at \$1.00; sold it at \$1.50.

Q. You rented it at \$1.00.

A. I think so, I wouldn't say it was 1910, but it seems to me—

Q. Don't you know, as a matter of fact, that all that land in there rented at 50¢ an acre as hay land?

A. I heard of nothing below 65¢.

Q. Do you know who rented that land the Hilda Quapaw land here in controversy during the time right up to the time that I purchased it?

113 A. There was a year or two that I don't know exactly, it seems to me that I let Jim Robinson have that among several thousand other acres, maybe it was just before that, I can't tell without referring to my records.

Q. Now then, did you rent the Douthat land after 1910?

A. No, I think that was my last year.

Q. Who rented it after that?

A. I don't know.

Q. Do you [—] any one who rented the land in that neighborhood of the character of this land, grass land, during that time?

A. I am talking about this hay man all the time. Of course, that is my only way of knowing what they were paying and why they were making hay?

Q. Well, do you know of any tract of land in that neighborhood—do you know the rental value of any tract of land in that neighborhood during the year 1910 or the year 1911?

A. I didn't charge my mind with it particularly, only in a general way.

Q. Well, how are you able to state that the land was worth \$1.00 to \$2.00 an acre during the time mentioned?

A. There are several hundred acres there of our own.

Q. Where?

A. Right northeast of Quapaw.

Q. That is about five miles east?

A. Oh no, not that; northwest corner of section 25 to 21, it isn't over two and a half to three miles.

Q. Whose allotment did you have, Mr. Abrams?

A. Had our own after I sold out to Mr. Robinson.

Q. 1909, wasn't it.

A. No, I don't remember just when it was except—

Q. You sold that out prior to when I came to this country, hadn't you?

A. Well it was about that time.

Q. You rented the Douthat land just one year?

A. Several years. Part of the time I had it at 75¢ and part of the time \$1.00 and part of the time higher.

Q. Part of the land that you had in your allotment was several miles east of the Quapaw land?

A. Yes, a little west, south of east.

114 Q. And you know of no other land in that neighborhood there that rented during that period that you know the value of?

A. Only in a general way. I can tell you what I sold mine for.

Witness dismissed.

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And thereupon W. M. SMITH, being called as a witness on behalf of the plaintiff, sworn and under oath, testified as follows:

#### Direct Examination

By Mr. Thompson:

Q. What is your name?

A. W. A. Smith.

Q. Where do you live?

A. Baxter Springs, Kansas.

Q. How old are you? A. 36.

Q. How long have you lived in Baxter Springs?

A. Since 1909.

Q. What has been your business since coming there?

A. Hay and farming business mostly.

Q. In what county?

A. In Ottawa County, Oklahoma.

Q. Are you acquainted with the location of the land known as the Hulda Quapaw-White allotment?

A. Yes sir.

Q. What is the nature of that land with reference to it being cultivated or not?

A. At the present time it is in cultivation.

Q. How long has it been in cultivation?

A. I think three years; or more, I rather think three years.

Q. Was it all in cultivation?

A. Lets see, the entire allotment is 200 acres.

Q. I am just thinking about the 100 acres sold to Mr. Ewert.

A. I think 20 acres is in grass and 80 in cultivation.

Q. Has your business taken you around and near this land frequently?

115 A. Yes, sir. Been near it every year and over there.

Q. Have you dealt in hay and farm leases and hay land near it?

A. Immediately adjoining it, yes sir.

Q. For how many years?

A. 1909 to 1915, six years, to and including 1915.

Q. Are you familiar with the cash rental values of land of that same character in that same community?

A. Yes, sir, I know what our company had to pay for it.

Q. What has been the cash rental value per acre per year for land similar to the lands that are now in question for the years 1909 to the present time?

A. \$1.00 per acre for grass up to \$1.50 an acre. I don't know of any of it that sold for over \$1.50, I don't know of any adjoining it that sold for less than \$1.00.

Q. What about the cultivated land, Mr. Smith.

A. Well there is a section, or part of a section of cultivated land that adjoins it, excepting one-quarter [a] of a mile north of it that has been rented—

The Court: Well, you are asked of any cash rental value of the cultivated land. If you you know that you may state.

A. It would average \$2.00 an acre.

#### Cross-Examination

By Mr. Ewert:

Q. Mr. Smith, did you with Walt Apple rent this identical land for 35¢ in 1908 and 1909?

A. We did not.

Q. Do you know had the lease on it then?

A. I don't think it was Beth, I am not positive.

Witness dismissed.

Mr. Thompson: I think that is all, if Your Honor please.

The Court: Any proof on behalf of the defendant in the Redeagle case?

Mr. Thompson: I take it, if Your Honor please, that the Court will make proper order to give us the benefit of the testimony offered in the other case.

The Court: Yes, the Court will make the order to apply the testimony in the case heretofore tried to the Redeagle case, so far as it relates to—

Mr. Ewert: So that no misunderstanding about this, in the early part of the testimony of Mr. Abrams, Your  
116 Honor permitted him to testify at random on the theory that it was leading up to something, and finally he detailed some oral conversation; I don't want that part of his testimony in this case because I don't think it is proper.

The Court: If you gentlemen have the record transcribed you can agree as to what applies, and if you can't I will settle it for you; I will determine for you. All testimony which is applicable in any respect to this case, in relation to the official capacity of Mr. Ewert, as Special Assistant Attorney General, and which has been admitted heretofore in the former case, the Bluejacket case, will be competent and considered as evidence in this case.

Mr. Ewert: Relating to his official capacity, with that understanding, I agree to it.

The Court: Yes. Now there were other phases of that case which will not be competent here.

Mr. Thompson: But if Your Honor please we also want that to cover questions offered by us and excluded.

The Court: Yes, offered or introduced. I told you gentlemen awhile ago that I would permit all the evidence offered and excluded, as well as the evidence introduced and admitted; the only question that probably would arise, as I view it, would be that you gentlemen may not agree as to what certain evidence in the Bluejacket case has relation to the phase of this case that touches Mr. Ewert's official capacity.

Mr. Ewert: Anything on the official capacity I agree to it.

Mr. Curry: Well, in order to give proper force to our offer to amend, we will include in our rejected evidence the statement of Mr. Abrams of his conversation with Mr. Ewert in his office. I am quite sure there will be a row about that.

The Court: Well you had better offer that now in this case if you desire to offer it. In the first place, that relates to that amendment, of course it is not in the case.

Mr. Curry: No, but the fact that the witness testified to that conversation before this offer was made would indicate the purpose of making the offer, and might be an influence as to

whether the offer ought to be accepted or rejected. Mr. Abrams testified that he told Mr. Ewert in the presence of Mr. Goodeagle that the land was worth \$25 an acre. The purpose of offering the amendment was that that evidence be applied to this case and we would add the testimony of Mr. Goodeagle that Mr. Ewert stated to him that he was a fool, that it was worth that amount, that the real value was \$12 or \$13 an acre.

The Court: Yes, but your amendment has not been permitted, therefore, there is no place for proof of that character in this case.

Mr. Ewert: We would like at this time to ask, in our Petition we have set forth the fact that defendant has made large and valuable improvement and things of that kind; now Mr. Kornegay, for some reason, is not sitting with me in this Redeagle case, but he advises me a little on matters of this kind—

117 The Court: You make your proof gentlemen.

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And thereupon PAUL A. EWERT, being first duly sworn under oath, testified as follows:

I am a defendant in this case. I know the location of the land in this suit. After I purchased the land I didn't go into possession until the summer of 1911 because the land was covered with an agricultural lease, upon which the rental had been paid in advance to George Redeagle; that the reasonable rental value of the said land during this time, the year 1912, I think the first hay crop I took from it, was not in excess of 65¢ an acre. I am familiar with the land and know every foot of it. The land is, for the most part, rough and hilly and is traversed by three distinct big ravines. I know how many acres are under plow, and the total amount of land under plow that can be plowed is about 56 acres. The balance of it is filled with ravines and cannot be cultivated at all; some of it may be pastured. There is a little land that can be cut for hay that is not cut, probably about, as I estimate it, 12 acres; and during that time, since I have owned the land, I have broken up all of it that can be broken up, about, I should say, 55 acres, and during those years, the reasonable rental value of that identical land has not been, in that neighborhood, in excess of \$1.00 to \$1.25 an acre. The land that adjoins it at the time I purchased the land was actually being leased by the people who leased it at 35¢ an acre and running from that to 50¢ an acre, which I admit was not the fair market value. I would say at



that time it was in the neighborhood of 75¢ to \$1.00; and during the entire period I have had that land there I would say that the fair rental value of the land—

Mr. Thompson: We object, if your Honor please, to the witness stating his opinion as to the value of this land without his having been qualified.

I will state that I am familiar with the rental of land in that locality, both for agricultural and grazing purposes.

The Court: The cash rental value?

A. The cash rental value.

The Court: All right, proceed.

The cash rental value of this identical land during the time mentioned was not in excess of \$1.25 per acre. During the time I owned it under the present deed I have completed improvements on it.

Mr. Curry: We object to the statement of any improvements he has placed on the land since he bought it, because if he acquired it illegally and having so acquired it illegally he wouldn't be entitled to anything he has put on the land or for any improvements that he put there.

Mr. Ewert: If it please the court this is a suit in equity.

The Court: Well, I have been thinking about that. If the plaintiff proceeds in this case at all he must proceed on the theory that this defendant—that it was unlawful for this defendant to purchase the land, in violation of a statute of the United States—in violation of the public policy of the United States \* I will hear the proof in regard to the improvements and determine later.

A. Since the approval of the deed of said land I have spent in improvements on said land in the neighborhood of \$1,000. I have erected a house upon it, a story and a half high. I  
118 have erected a barn on it and a granary; I have drilled wells upon the land and put in casing and furnished pumps; and in addition to that I have broken up the land and made it fit for cultivation and enriched it by fertilizer and manuring it, and the value of the improvements I have placed upon said land since I have purchased it is at least \$1,000.

Now, may I understand, Your Honor, what our agreement is with respect to my employment. Will the character of the

testimony I have offered and presented relative to the knowledge of the Secretary of the Interior be included in that?

The Court: Your testimony in that regard had relation to the Bluejacket matter and wouldn't apply to this matter.

A. I will state that I purchased this—

Mr. Curry: If it could be done, we trust you will agree that it might be applied so far as the—

The Court: Will your evidence in regard to the transaction in the Redeagle transaction, so far as the conversation with the Secretary of the Interior and the other officers in that department be the same in relation to this case as the other cases?

Mr. Ewert: With this exception, that this land was purchased in the name of Franklin Smith and the deed, I think, was approved and delivered to me some time in May or June of that year, and prior to the time of the delivery of the deed, the first conversation occurred with the Secretary of the Interior of the United States, because the Bluejacket deed was there at the same time for approval, and the Secretary of the Interior of the United States had the same knowledge of the facts that I was the real owner of the land here in controversy, the Redeagle land, as I was of the other, although won't declare positively that the time the deed was approved, I am not clear as to the exact time I was there, but thereafter and before the deed was delivered to me by the Secretary of the Interior through the Indian Agent, the Secretary of the Interior had the knowledge that the land was mine, because both transactions came up at the same time before the Department, and with this identical land which was afterwards the subject of the same scrutiny and the same examination.

Mr. Curry: We object to his stating that.

The Court: So far as later transactions are concerned, I understand you would offer the same proof in relation to this case that you offer in relation to the Bluejacket case?

Mr. Ewert: That is true.

A. I will state that during the period named I have also paid in the form of taxes upon this land an average of, I think, \$40 per year, and I further state that of my own knowledge the conversation had with George Redeagle that he knew—

Mr. Curry: Wait a minute.

The Court: Objection sustained if that is objected to. That is not in this case.

Mr. Ewert: May I make this suggestion, it is a question of laches which would date from the time that he knew I was the record purchaser of that land?

The Court: Well that is the conclusion now.

119 A. Well, I will state that I had a conversation with George Redeagle some time in 1911 and again in 1912 relative to this identical land, and that George Redeagle stated to me that he knew that I was the owner of it, and I stated that I was attempting to procure a loan upon it. I asked him for a quit claim deed upon it, and he at that time stated to me that he wouldn't give me a deed because he knew that I was the purchaser of that land.

#### Cross-Examination

By Mr. Curry:

Q. Mr. Ewert, who was Secretary of the Interior at the time just preceding and after that purchase of the Redeagle land?

A. Franklin Pierce I think was Secretary, and my recollection is that Mr. Ballenger. I didn't talk to Mr. Ballenger.

Q. Who did you talk with in the office of the Secretary?

A. Franklin Pierce.

Q. Where did you see him?

A. In the City of Washington.

Q. In his office? A. In his office.

Q. Franklin Pierce is Assistant Secretary.

A. Assistant Secretary.

Q. Do you know whether that information was conveyed to the Secretary himself?

A. I don't know from my own knowledge that that was true, but I will state that—

Q. Then you don't know at all.

A. Franklin Pierce is the man who had charge—

Mr. Curry: I object to what Franklin Pierce stated to you.

The Court: Answer the question, you don't know.

Q. Now, Mr. Ewert, did you talk with any other attache of the Secretary of the Interior's office except Franklin Pierce?

A. Not of the Secretary of the Interior's office proper.

Q. Now, was your talk with Franklin Pierce that you have mentioned before or after the approval of the Smith deed.

A. I would say—

Q. You can say whether it was before or after.

A. Well, I can't say about that, my best judgment is, I know it was before the deed was delivered.

Q. The deed was delivered to Franklin Smith, you charge that?

A. I believe it was delivered, when I say delivered—

Q. And Mr. Smith kept the title to that land about a  
120 year, didn't he.

A. Yes I should say so.

Q. What was the consideration recited in that deed when it was delivered to you by Franklin Smith.

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Your deed was placed upon record directly after it was given to you, was it, by Mr. Smith?

A. Yes, that is my recollection of it.

Mr. Curry: Does your Honor hold that we can ask him to state what the recited consideration was in the deed from Smith to him?

The Court: Well, if that is competent at all the deed would be the best evidence of what it contained.

Mr. Ewert: I don't see the competency of it.

Mr. Curry: Well, there might be some question of notice, some question of constructive notice; we charge he had actual notice and constructive notice. If the deed says on its face more than—

The Court: It has been set up in the Petition as a certain figure, I think \$2,000.

Q. Mr. Ewert, why do you recite in your deed from Franklin Smith to yourself a consideration of \$2,000?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. Why, Mr. Ewert, did you have this land bid in by Franklin Smith and have the deed taken in the name of Franklin Smith.

A. I think both of these bids were made at practically the same time and I had the only —

Q. Both of these bids—what bids do you mean?

A. The Redeagle deed and the Bluejacket deal, which I purchased about the same time. Smith had an office just across the street from where I was and I went over and said “Frank, I am going to bid in the piece of land in your name” and that is all that was said about it, all the knowledge that Smith ever had of it.

Q. Smith didn’t say anything at all?

A. Not a thing.

Q. Then he carried the deed for a year?

A. Approximately that.

Q. Approximately a year and then you told him to make the deed and recite a consideration of \$2,000 is that correct?

121 A. Well, I will tell you about that, Curry, at about the the time that deed came back, some of the men who I had brought suits against began to talk about the Bluejacket matter as though it was a . . . . ., and I went to Smith and told him that I wanted him to deed me that property, but some of those fellows against whom I had instituted the suits said “Don’t you do it” so he advised me and Smith kind of held the matter off during that time, although I asked him along in October about deeding it to me. He held it up for some reason or other.

Q. The suits which you speak of were brought in the name of the United States in the interest of these Indians, the Quapaw Indians? A. Marshal’s deeds and other suits.

Q. They were suits brought in the name of the United States to assert the rights of Indians of the Quapaw Agency, weren’t they?

A. I think there were no suits—I refreshed my memory, there were no suits instituted in any case except Marshalls deed, because prior or toward the middle of the latter part of the year 1909, I think probably July, as I now recall it—

Q. Well, all you did as Special Assistant to the Secretary of—Special Assistant Attorney General under Wickersham, was in relation to the Indian affairs of the Quapaw Indians?

A. To what period do you refer to?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Confine the question to that period prior to this transaction.

Q. Were you, or were you not, engaged in bringing and prosecuting suits in the name of the United States for the purpose of enforcing the rights of Indians prior to the time that you purchased this Redeagle land? A. No.

Q. Did you at any time have anything to do with asserting any rights of the Indians or any Indian prior to the time you purchased this land.

A. I brought all the marshal deed suits filed prior to that time but no other suit.

Q. Marshal deed suits were brought in the name of the United States? A. Yes.

Q. Were they for the purpose of asserting rights of the respective Indians? A. No.

Q. Whose rights were involved in those suits?

A. The rights of such Indians as were involved. I think something like 15 or 16 suits.

122 Q. Were there any so-called marshall deed suits brought that did not involve the rights of Indians of the Quapaw Agency? A. Suits involving the marshal deeds—

Q. Please answer my question.

A. Well, that is a matter of law, Curry.

Q. No, I think that is a matter of fact—

The Court: Can you answer that, yes or no?

A. I can't answer that yes or no.

Q. Don't you know whether there was or not?

A. Curry, you know that suits were brought for the individual Indians \* —

Q. I don't want you to argue with me.

A. I can't answer that yes or no.

Q. Mr. Ewert, were you not before this purchase, contemplating the bringing of suit affecting the rights of Indians and not the rights of the Indians other than those involved in marshals deed, or what you call marshal deed?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial and not within the issues of this case.

The Court: Objection sustained.

Q. Did you employ all of your time in your official position as Special Assistant Attorney General of the United States from the time of your appointment until after this deed was made? A. Did I what?

Q. Did you employ all your time in your official duties as Special Assistant Attorney General of the United States?

A. Yes.

Q. Did you during from the time of your commission as Special Assistant Attorney General have any business with the Government other than that relating to Indian frauds from the date of your appointment until after the purchase of the Redeagle land? A. I think so.

Q. What other business did you have with the United States, that is, business not pertaining to an Indian or Indians lands or rights?

A. Well I am not certain of the exact date, but it was about that time that I took charge of gathering some evidence with respect to the fraudulent use of the United States mail in respect to the purchase and selling of bogus stock by a concern doing business in England, where they were floating certain stock that was based upon probable value—

123 The Court: Let's not go into that. You have this man on cross-examination, you may ask direct questions or leading questions if you desire.

Q. Now, for that service, whatever it was, did you receive any extra compensation? A. No.

Q. When from the time that you were appointed, and up to and including the time of the taking of this deed, you may state whether or not you wrote letters, and you can answer this by yes or no, to divers and sundry parties in Ottawa County, Oklahoma, and Cherokee County, Kansas, whom you supposed were having dealings with Indians, in regard to their—Quapaw Indians in regard to their restricted land—

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Curry: In view of the ruling of the Court, we offer to show by this witness that he wrote letters to divers and sundry persons, and will get the witness to state the names of the persons, in which he took up and discussed the rights of the several parties to whom he was writing in their dealings with Quapaw Indians; not relating to any so-called marshals deed land but mining leases and leases of that character, and



that that correspondence was prior to the purchase in this case; and that further in these letters he represented himself as being engaged in Indian affairs under the employment of the Government, and to be looking after the affairs of the United States of the Indians of the Quapaw Agency.

Q. Did you tell any other person connected with the Government of the United States, that is, other than Mr. Pierce, that you had purchased this land in the name of—Redeagle land in the name of Franklin Smith and was holding it in the name of Franklin Smith?

A. Yes.

Q. Who was it?

A. Attorney General Wickersham and Wade Ellis, Acting Attorney General, and Mr. R. U. Valentine, Commissioner of Indian Affairs.

Q. What were the first names of these respective parties you mention?

A. George W. Wickersham, Attorney General.

Q. What is the other?

A. Wade Ellis, Acting Attorney General.

Q. Who else?

A. R. U. Valentine, Commissioner of Indian Affairs.

#### Redirect Statement

By Mr. Ewert:

I desire to state further, I will ask myself a question and  
124 you may put it down:

Mr. Ewert, under your employment during the times mentioned, were you to give your entire time to the service of the United States, or were you to have the right to take on private work during that time?

Mr. Curry: I object to that as incompetent.

The Court: Objection sustained, no connection with this case.

Witness dismissed.

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And thereupon IRA C. DEEVER, being called as a witness upon behalf of the defendant, and under oath testified as follows:

#### Direct Examination

By Mr. Ewert:

Q. State your name. A Ira C. Deaver.

Q. What is your present employment, if any?

A. United States Indian Superintendent Quapaw Indian Agency.

Q. Located where? A. Wyandotte, Oklahoma.

Q. How long have you held that position?

A. Since June 6, 1908.

Q. Do you recall the instance of George Redeagle, the plaintiff in this suit, petitioning to have his land sold under the rules and regulations or under the laws of the United States—

Mr. Thompson: We object to that question for the reason that it is incompetent, irrelevant and immaterial.

The Court: I think so. It is presumed here that petition was regular and that the rules and regulations were observed for carrying out the sale. I don't think there is any charge in this petition that you had anything to do with that all so far as influencing Redeagle to make the petition; no charge of that kind and the objection is overruled.

Mr. Ewert: The plaintiff offers to prove by Ira C. Deaver, Indian Agent, now on the stand, that the lands in question were first offered—that the plaintiff in this case first petitioned the Secretary of the Interior of the United States to offer the said land for sale under the acts of Congress and rules and regulations promulgated by the Secretary of the Interior, during the month of July, 1908; that the said lands were not sold at the first bidding, and that thereafter they were continuously advertised and offered for sale at four different times before they were finally sold to P. A. Ewert, the bidder in this case.

125 Mr. Curry: To which we object for that reason that it is incompetent, irrelevant and immaterial.

The Court: Just a moment, are you through with the offer?

Mr. Ewert: I think that is all.

The Court: Any cross-examination?

Mr. Curry: No.

Witness dismissed.

The Court: Any further proof in this case?

Mr. Curry: We have none.

Mr. Ewert: That is all.

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The Court: Now Mr. Ewert, in order to save possible misunderstanding when this record comes to be made up, it better be definitely understood now just what part of the conversation with the Secretary of the Interior, or subordinate officers, offered in the Bluejacket case, will be sought to be used by you in the Redeagle case. I wish you would make a statement to the Court now as to just what portion of your evidence in the Bluejacket case in relation to your conversation with the Secretary of the Interior, or subordinate officers there at Washington, you will desire to use in this case.

Mr. Ewert: This is a rather difficult matter to do but I desire to use all that portion of my testimony in which I stated that I had a talk with the Attorney General of the United States as to the [propriety] of bidding on these Indian lands, and that he said he could see no reason why I should not bid on them in the open market at public sale, and that portion of the testimony wherein I stated that I talked with the Secretary—Assistant Secretary of the Interior, and with Valentine, relative to the approval of these deeds; the conversation referred to in the Bluejacket matter, prior to the time that the deed, the Bluejacket deed, was approved, was held in the latter part of May or the middle of June, I think; and as to the conversations that occurred, related in the Bluejacket testimony, at that time and after; and I desire to have applied to the Redeagle case, in addition to my own testimony in this case.

The Court: That probably clears up the record. Have you gentlemen any suggestions to make in regard to that? If not, we will proceed. Is your proof all in, gentlemen?

Mr. Ewert: The defendant rests.

Mr. Thompson: Yes sir.

The Court: Well, these two cases may be argued together. I will hear you gentlemen.

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126 (Testimony taken in the case of Carrie Bluejacket, et al., vs. Paul A. Ewert, No. 2299 and considered in the instant case.)

Carrie Bluejacket, et al., Complainants,  
No. 2299. vs. Equity.  
Paul A. Ewert, Defendant.

Now on this 15th day of March, 1917, at Vinita, within the Eastern District of Oklahoma, came on for hearing before the

Honorable Ralph E. Campbell, Judge, the above entitled and numbered cause; whereupon there appeared on behalf of the complainants, A. Scott Thompson, Esq., and H. W. Curry, Esq. and appeared on behalf of the defendant Paul Ewert, Esq., pro se, and W. H. Kornegay, Esq., and the parties proceeding to trial hereof, proceedings were had as follows:

Mr. Curry: The plaintiff in this case requests the court to rule that under the provisions of the Revised Statutes of the United States, Section 2126, the burden of proof is on the defendant, a white man.

The Court: The record may show that the court holds that the burden of proof in this case is upon the plaintiff, notwithstanding motion of counsel based upon the statute cited; and exceptions noted.

#### 127 Evidence On Behalf of The Complainants.

GEORGE REDEAGLE, being called on behalf of the complainants, being first duly sworn, testified under oath as follows:

##### Direct Examination

By Mr. Thompson:

- Q. What is your name? A. George Redeagle.
- Q. How old are you, Mr. Redeagle?
- A. I am neighborhood of 50.
- Q. What tribe of Indians do you belong to? A. Quapaw.
- Q. What degree of blood are you, George? A. Fullblood.
- Q. Do you know Charley Bluejacket? A. Yes sir.
- Q. Is he living or dead? A. Dead.
- Q. Did you know his son Wolly Bluejacket? A. Yes sir.
- Q. Is he living or dead? A. He is living.
- Q. Wolly Bluejacket? A. No, Wolly is dead.
- Q. Know about when he died, Mr. Redeagle?
- A. Not exactly, I don't remember.
- Q. How old was he when he died, about?
- A. I don't remember that.
- Q. Well, was he ever married?
- A. Oh, probably 12 or 13 years old, I reckon.
- Q. He was not a married boy, was he? A. No sir.
- Q. And do you know who his mother was? A. Yes sir.
- Q. What was her name? A. Carrie Bluejacket.
- Q. And she is living, is she? A. She is living.
- Q. And his father was Charles Bluejacket? A. Yes sir.
- Q. Did Charles Bluejacket die before this boy died?
- A. Yes sir.

Mr. Thompson: I take it, Mr. Ewert, that there is no contention that these parties who made you the deed were not the lawful heirs; you admit that in the bill.

128 The Court: If it is admitted by the pleadings, it will be taken as true.

Mr. Thompson: The only denial, I think, was as to the heir; one of the minor grantors had died since Mr. Ewert's deed was made, and suit was brought in the name of his mother, who would be his heir.

Mr. Ewert: I don't know anything about that, Your Honor.

The Court: Now, let me understand this, without putting this in the record—well, you may put it in the record if you desire; first, now, which one of the minors is it, whose deed—this is Charlie:—

Mr. Thompson: No.

The Court: Willie Bluejacket is dead, unmarried, and his mother was Carrie Bluejacket, she is alive?

Mr. Thompson: Yes sir.

The Court: His father was Charles Bluejacket and he died before his father—

Mr. Thompson: Yes yes.

The Court: Willie Bluejacket is the boy who died since this transaction. Now, who besides the mother stands as his heir?

Mr. Thompson: I wouldn't understand that it is anyone but his mother.

The Court: Then the mother stands in this case as the heir—Carrie Bluejacket?

Mr. Thompson: Yes sir. I believe that is all.

Witness dismissed.

129 And thereupon, A. W. ABRAMS being produced as a witness on behalf of the complainant, sworn and testified under oath as follows:

#### Direct Examination

By Mr. Curry:

Q. What is your name? A. A. W. Abrams.

Q. Where do you reside, Mr. Abrams?

A. One mile and a half, about, north of Lincolnville, in Oklahoma.

Q. On a farm? A. Yes sir.

Q. Are you a farm owner?

A. I have my allotment; isn't much farm on it; allotment of 240 acres.

Q. How long have you lived in Ottawa, Oklahoma?

A. Since the 10th of October, 1887.

Q. What has been your business?

A. For several years I farmed and stock raised and did quite a lot of leasing of lands; writing for the neighborhood, notary public for four years. Later I was engaged in mining, prospecting, or wild catting it was on the start; found some ore. I am still doing a little of that.

Q. In what particular district?

A. What was known as the Sunnyside district, up there north of Lincolnville.

Q. In your business would you have dealings more or less with Indians?

A. I was clerk of the Quapaw Council and am yet; have been since the first Council after I reached there in '87.

Q. Did you at any time occupy an advisory position with the Indians, or were you in the habit of being consulted and advised with by the Indians in your community?

A. Well, yes; yes sir.

Q. How extensive was your acquaintance with the Indians in Ottawa County, Oklahoma.

130 A. Well, with only the Quapaw tribe; I didn't counsel with any [—] the others except—that is, not especially; I occasionally did, but with the Quapaw Indians it was almost an every every day occurrence for many years.

Q. State whether or not you had anything to do with the allotting of the lands to Indians in Ottawa County?

A. Yes sir.

Q. State what you did.

A. I was one of three in the allotting committee; I headed that committee.

Q. How long were you employed in the work on that committee and allotting land?

A. Sir?

Q. How long were you employed in your work on that committee in allotting Indian land?

A. I think the Quapaw Council Act was about April 21, or 23rd, I don't remember which, in '93; I acted in that capacity until the work was terminated by Congress, I think

in January or February '95; maybe it was March. Then my mission ended.

Q. State whether or not you had anything to do as the representative of the Indians in recommending to Congress the adoption of the allotment act.

A. I did. I was the delegate to Washington several times, beginning in December '89 and ending with the—probably the March term in '95; I think probably that was the last term.

Q. You mean that you were delegate from the Territory of Oklahoma?

A. Oh, no, no; from the Quapaw Indians, the tribe.

Q. And it was during your work as the delegate that this allotment was passed, as I understand you?

A. Yes sir.

Q. That has been how long ago?

A. Well, '93 was when they passed the allotment act by our Council; we soon afterwards began the work of allotting the land and finished, I think it was terminated  
131 by Congress in the session ending in March '95.

Q. Now, from that time, state whether or not you had to do with the Indians in an advisory capacity with reference to their allotted lands and properties thereon situated.

A. Yes sir, I did.

Q. To what extent?

A. Well, they were up to my house most every day and [sometimes] as many as twenty or thirty would eat dinner with me, so you see how extensive it was.

Q. So you are thoroughly familiar with the Indian character?

A. The Quapaw reservation.

Q. Are you acquainted with the defendant Paul Ewert?

A. I have met the gentleman.

Q. When did you first meet him with reference to the time that he came to Miami, Ottawa County, Oklahoma?

A. It seems to me that—of course I have no data on hand—it seems to me that it was in 1908; it might have been in the fall of 1908, but I am satisfied that it was in 1908 that I first met him.

Q. At that time state whether you had any of what is known among you people down there as marshal lands; lands to which the deeds had been made by the Marshal of the United States, under some deed of partition?

A. Oh, I never had an acre.

Q. Had none of that?

A. I have never bought an acre of this Indian land.



Q. Tell the Court about how you came to be acquainted with Mr. Paul Ewert in a business way.

132 Mr. Kornegay: Your Honor, we object; I suggest that this is immaterial, it seems to me taking up a good deal of time.

The Court: I don't understand—he may answer. I will see what this is developing.

Mr. Curry: Just preliminary.

A. Shall I answer?

The Court: Yes.

A. It became known to me that he was—that he had said a great many—

The Court: Well, never mind about that. What was the first—what was the circumstance of your first meeting; what transpired there and what was it? Tell the Court about it.

A. I came down to Miami to see him.

Q. On whose invitation? A. Sir?

Q. I say how did you happen to go to Miami to see Mr. Ewert?

A. Won't allow me to answer that because I had heard he was there to—

Mr. Ewert: That is objected to, Your Honor.

The Court: I am going to hear, now, just briefly what he had heard. Answer that question now.

A. It was common rumor around there that he was—that he was after me and my Company on our mineral leases there; we had some mining leases.

Mr. Ewert: I don't understand.

The Court: Common rumor, he was after me and my Company on some mineral leases there.

A. Made special mention of us.

133 Q. Tell what conversation you had with him.

A. I can't repeat that exactly.

Mr. Kornegay: We object, Your Honor.

The Court: What is the purpose of that?

Mr. Curry: The defendant in this case pleads that he came into the district solely to bring certain particular suits with certain deeds known as marshal's deed; seeking to show by

this witness that he was included in his suit—in the suits that he was threatening to bring, and that he was talking with the Indians, and that he called this man and other men in, and challenged their dealings with the Indians, and informed them that he was there to bring law-suits generally in relation to any matters affecting the Indians. Also, I seek to prove our allegation in the bill, that it became generally known throughout that whole Quapaw tribe that Mr. Ewert, as a representative of the Government, was not there to protect their rights and bring suits and restore them what they had lost—

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial; not shown that it was within the period of time when this suit was handled or anything of that kind at all.

The Court: Well, I am going to be pretty liberal in this case; I am not prepared to say that I will consider everything that goes in. He may answer, and in order to shorten the record, the record may show if you desire, the record may show that objections to each of these questions is made, without you actually introducing it. The record may show that you introduced the objection to each of these questions,  
134 and the objection overruled, and exceptions noted.

Mr. Ewert: Will the objection show as incompetent irrelevant and immaterial, and no foundation laid?

The Court: Yes, this has relation, now, to all questions relating to representation which defendant Ewert made with regard to his duties as representing the Government in the Quapaw tribe.

Q. Well, the substance of your conversation; what was the substance of your conversation with Mr. Ewert?

A. I undertook to explain to Mr. Ewert the truth as to our leases.

Q. Why did you do that? What had been said by him?

A. I went down and introduced myself, knowing and hearing that he was in the neighborhood for that purpose.

Q. What did you say to him in substance? Give it as near as you can, repeating the substance of your conversation; not verbatim, of course, but the substance of what he said and you said.

A. Well, it was in regard to the validity of our leases, the fraud as I heard he had accused me of using.

Q. Did you tell him that you heard that he had accused you of fraud?

A. I certainly did.

Q. Tell what you said now.

A. That there was no fraud in it; I would love to be defrauded in the same way. I had land that I would lease him on the same terms, only on better terms.

Q. Did he, or did he not, explain to you why he was making inquiry in regard to your leases, or charging you with  
135 fraud?

A. No, not that I remember of specifically. The question seemed to be a great deal in regard to the overlapping leases.

Q. Go ahead.

The Court: Let's not go into that; he went to see Mr. Ewert, seeking to show Mr. Ewert as to certain rights. Let's see what Mr. Ewert said.

Q. State if you can what Mr. Ewert said to you without reference to what conclusions you drew from it; state what he said as near as you can.

A. That they were fraudulent.

Q. Said what?

A. Said that my leases were fraudulent on the face of them; that they were illegal; that the Government would go into court to set them aside.

Q. Well, that was your first conversation?

A. That was probably the drift of several conversations.

Q. How many times did you go to see him if you know approximately?

A. I can't tell the number. It was many times.

Q. Now, when you went to see him and saw him in his office, state whether or not there were other Indians in there.

A. Oh, generally from two to several.

Q. You spoke of the first conversation you had with him; go to the next conversation if you can remember when you saw him again and how long apart the two conversations were.

A. I can't tell just how much time intervened because I went several times. I tried to make friends with the man and show him that our leases were alright.

Q. Well, what was the next conversation you had with him? Do you recall him ever sending for you to come to his office?

A. Oh, yes, he was up to my office two or three times.

Q. What did he come to your office for, and what did he say when he came up there?

136 A. He came once with—to copy a lot of my records and books as to accounts on Charlie Quapaw's mining business; he began no place and ended no place but he took a lot of my records in that way which I was perfectly willing for him to have.

Q. Well, what did he say he got them for?

A. I suppose to use before the court.

The Court: What did he say?

Q. What did he get them for?

A. To use before this court; send to the Government.

Q. State whether or not, Mr. Abrams, he said he was going to use them in court?

A. I can't exactly state his language, but to be used in these law suits against us.

Q. Do you know whether or not any suits were subsequently brought in regard to these leases, the descriptions of which he had gotten from you?

A. I don't know that he used them in the—

Q. Do you know whether there was a suit brought on that Black Hall land by Mr. Ewert in regard to some leases?

A. Yes.

Q. About what year was that in?

A. I can't tell whether it was in—it seems to me that it was in nine; tried by Judge Campbell.

Q. Was you made a party to that suit?

A. I think I was.

Q. Was that the case of the United States vs. Noble and others?

A. Yes sir.

Q. That went to the Supreme Court of the United States?

A. Yes sir.

Q. Do you remember of seeing and talking with Mr. Ewert in his office in the presence of Mr. Redeagle?

A. Yes.

Q. When was that?

A. Now, I can't tell whether it was in—it was sometime in the fall, winter or very early spring; it was either in 137 the late fall of 1908, or very early in the spring of '09.

Q. Now, how did you come to go to his office that time?

A. He sent for me; 'phoned for me that he wanted me to come down, or wrote me, I don't remember which.

Q. You went down in response to his request?

A. I did.

Q. Who did you find in his office when you went there?

A. George Redeagle and his sister.

Q. State the conversation as near as you can had with yourself and Mr. Ewert.

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial; show what the conversation was about.

The Court: Overruled; he may answer.

Mr. Ewert: Exceptions.

The Court: Now, let me ask you; had this relation to the Carrie Bluejacket case that you are trying?

Mr. Curry: Yes sir.

The Court: Alright.

A. There was no business of any kind talked of on the start, only a few generalities; he finally asked me if I knew about the Hully Blackhall land up here, I said I did. I can't remember, of course, verbatim.

Q. Give the substance of it.

A. As near as I can, he asked me what that land was worth; I said twenty-five dollars an acre—

Mr. Ewert: Now, we move that all that be stricken, Your Honor, as incompetent, irrelevant and immaterial; nothing whatever to do with this case.

The Court: Overruled.

Mr. Ewert: Exceptions.

138 A. He asked me what I would give for that land and I said twenty dollars an acre; he says it is worth twenty-five, why wouldn't you give twenty-five? I think that my answer was that I am not swapping dollars. I know where I can place that land at twenty-five dollars before sundown, or before Saturday night, or something like that, which I did.

Q. Well, what if anything, did you say to Mr. Redeagle in the presence of Mr. Ewert there, in regard to that land?

A. I advised Mr. Redeagle as I had a hundred times before not to sell land.

Q. Well, what did you say to him? That is a mere conclusion of yours; what did you say to Mr. Redeagle? I didn't ask you to repeat the language, but the substance, to Mr. Redeagle in Mr. Ewert's presence.

A. Well, I said to George, I don't advise you to sell your land; I advise you to keep it. Word to that effect now; I said you will spend your money; I think I made this remark: it will be like a chunk of ice set out in the June sun; at night there will be nothing but a wet place. You will have nothing for it and I think I went on and said further, I will tell you what I will do, George, I will give you two hundred dollars a year for that land for all time and you keep the land.

The Court: Put me straight as to what this Blackhall land is.

Mr. Curry: Involved in the Redeagle suit.

The Court: How does that come in this case?

Mr. Curry: It comes in this case if Your Honor please upon our theory of the case, upon this proposition: Mr. Ewert denies that he was making general—giving general notice out to these Indians that he was assuming guardianship over these Indians and specifically pleads now that he had a particular business relating to a particular thing, and that he adhered to that. Now, the charge [ie] that he exercised undue influence over these Indians by means of having it generally known that he was the protector of them, the Government, and spoke for the Government in protecting the Indians. Now, I think on that theory, independent of the suits, we will be entitled to show other specific acts as you do in order to prove fraud. You may prove other similar frauds happening about the same time, although they are not of the exact same nature, for the purpose of showing the intent of the parties and the purpose they had in doing certain things.

The Court: Well, I will follow this a little further.

Mr. Ewert: Kindly note our exceptions.

The Court: Exception noted.

Q. Now, are you familiar with the Bluejacket land in controversy in this case? A. Yes sir, I am.

Q. How long have you known that land?

A. About 28 years or something like that.

Q. How far is the Bluejacket land from your allotment?

A. Well, I have never lived on my allotment; I am living within about one mile from the nearest corner of the Bluejacket land.

Q. You have known the Bluejacket land for about how long?

A. About 28 or 29 years.

Q. What if anything has been done on the Bluejacket land in regard to mining, and about when was it done.

140 Mr. Ewert: Objected to as incompetent, irrelevant and immaterial for this reason—

The Court: What is your purpose? I don't see the drift of that unless it be to establish the value of the land; it is admitted that the value of the land here present is sufficient to—

Mr. Curry: I am going to undertake to show that the land had been sufficiently developed to give it a mineral value at the

time this land was sold, and will probably be able to show by admissions here, that the Secretary of the Interior did not know the status of that—

The Court: Well, suppose he didn't know it, unless it appears that Mr. Ewert had something to do with his not knowing it, how does that connect Mr. Ewert in this case?

Mr. Curry: Independent of his relationship to the Government, it might not.

The Court: Your theory being that his relationship with the Government was such that he should have advised the Secretary in regard to this situation?

Mr. Curry: That certainly is my theory, independent of the statutes he came down here to represent these Indians and bring suit as the evidence shows he did, and it became his duty to notify the Secretary of the Interior, especially if he was going to buy the property.

Mr. Ewert: Objected to as irrelevant, incompetent, and immaterial.

141 Mr. Curry: Of course, the evidence we are offering would be admissible on the grounds of an accounting, we are asking for an accounting—

The Court: I will hear your objection now.

Mr. Ewert: For this reason, that the value of the land at the time the purchase was made is absolutely immaterial because under the rules and regulations promulgated by the Secretary of the Interior of the United States, which are attached to the answer in the case, it becomes the duty of the Secretary of the Interior of the United States to appraise those lands at their full value, and the appraisement is made by the Secretary of the Interior of the United States; and it would be immaterial whether these lands were worth one hundred dollars per acre or twenty-five dollars per acre, the appraisement of the Secretary of the Interior stands as the appraised value for all the world, and what the value of the lands actually were, cannot possibly come into this case, because the value is fixed by the Secretary of the Interior when he submits it to the world and places the appraisement on there, and anybody who did before that presumption is subject to the approval of the Secretary and may purchase—

Mr. Curry: I want to suggest that this circuit held in the Bell case held that the acts of the Secretary of the Interior



approving a deed or fixing values or anything of that kind, where he did not have sufficient before him to justify, his decree would be set aside.

142 The Court: Well, but that is not charged in this case, I am called upon in this case to set aside this transaction because the Secretary did not have all the evidence before him.

Mr. Curry: That is true.

The Court: I take this case just as if the Secretary had had all the evidence that was available, except on your theory, that it was Ewert's duty as an officer of the Government to advise him with regard to it, and that it was against the law for him as an officer of the Government to make a purchase. Now, so far as his relation to the Government is concerned, it doesn't make any difference under your theory, whether he paid a sufficient amount or not, whatever the land was worth, he could not purchase it. That is true, isn't it?

Mr. Curry: Yes, that is true.

The Court: Now, so far as his duty to advise the Secretary with regard to the value of the land is concerned, I don't think that his status has been shown to be such that at this stage of the case any such duties devolved upon him.

Mr. Curry: Well, suppose that is true, but suppose he had—suppose it is shown here that he had knowledge even, of a prospective value in this property and he is under disability, not disability of the statute, but suppose he is under any kind of disability, suppose he is in a position where equity charges him with disability to purchase because of his fiduciary relations to this land, then the value of that property if any prospective value, is admissible in evidence for the purpose

143 of impeaching—

The Court: Yes, but I will sustain the objection now until that fiduciary capacity appears from the evidence. Objection sustained.

Mr. Curry: We except. If I understand the ruling of the Court, it is that we will not be permitted to show the actual value of this land at the time it was purchased?

The Court: I will not permit you to go into that now until there is something more in this case to establish what you claim to be the fiduciary relation of this defendant.

Q. Since the early part of 1909 you have been familiar with this Bluejacket land, have you? A. Yes, right along.

Q. Are you familiar with the rental values of lands in that neighborhood and vicinity? A. Yes sir.

Q. What, in your opinion, is the rental value per year or per month of this Bluejacket land, since the early part of 1909?

Mr. Ewert: Objected to as irrelevant, incompetent and immaterial; no foundation laid to show that he knows this land or the value of it for agricultural purposes.

The Court: Sustained.

Q. Do you know the description of this land?

A. Not right at my fingers ends.

The Court: Do you know this piece of land as a piece of land out there; have you been on this land?

A. Oh, yes, many a time.

144 Q. How much of it is bottom land, if you know?

A. Well, I think that over half was bottom land.

Q. And how much of it, if any, is mining land, and how much of it, if any, has been mined since 1909?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled; exception noted.

Q. Can you answer that?

The Court: You may answer.

Q. How much of the land has been mined, if any since 1909?

Mr. Ewert: Same objection.

The Court: Overruled.

Mr. Ewert: Exception.

A. There is one mine that has been worked on it for quite a while.

Q. Just now it is not in operation?

A. Not in operation.

Q. Have you been over the land when crops was growing on it? A. Oh, I have been.

Q. Passing around it and seeing it?

A. Yes, I have passed it and around it but not over all of it.

Q. Do you know anything about the quality of the soil of that land? A. Oh, it is good; bottom land—is good.

Q. Of the bottom land—how much do you say is in bottom?

A. I think over half of it.

Q. Does that overflow bad?

A. Occasionally it does overflow but I think it has not recently; maybe it did last year for a little while.

Q. Is a part of the up-land farmed?

A. No, I think not; I don't think there is any farm on the up-land part.

145 Q. How much of it is in timber if you know?

A. There is probably fifty or sixty acres. It is not timber, it is scrubby; it is not very good.

By the Court:

Q. You may answer this question—now, answer this question now, in order to get to the particular point: do you know about the rental value of this land about which you have been interrogated since the year 1909? You may answer that yes or no—do you know what its rental value has been from year to year since that time?

A. May I explain there is two kinds of rental—grain rent and cash rent.

Q. Well, as to the grain rent.

A. One-third is what we all as a rule take.

Q. And as to cash rent?

A. From two to three dollars an acre.

By Mr. Curry:

Q. Annually? A. Yes sir.

Q. Mr. Abrahams, you say that you were practically acquainted with all of the Indians of the Indian tribes—that is the Quapaw Indians? A. I know all of the Quapaws.

Q. You have, prior to the time Mr. Ewert came to Miami as Assistant United States District Attorney—to the Attorney General, you say you had had extensive dealing with the Indians, dealing with them as an advisor? A. Yes.

Q. State whether or not you had had since Mr. Ewert's come there sufficient information, by association and talking with the Indians, so as to form an opinion as to the influence and character of influence that Mr. Ewert exercised over those

Indians by virtue of being known as Assistant United States Attorney to the Attorney General?

146 Mr. Kornegay: We object to that, Your Honor, as being incompetent; we object to it as being immaterial.

The Court: Objection sustained.

Mr. Curry: We except. Can we follow that by making the offer—

The Court: Yes, you may put that in the record.

Mr. Curry: We offer to show by the witness on the stand that up for many years prior to the time that Mr. Ewert came to the—to Miami, as an Assistant United States District—as Special Assistant Attorney General of the United States, that he had been—that the witness had been occupying an advisory capacity towards a very large number and proportion of the Quapaw Indians; that after the defendant came to Miami and was known to the Indians as United States Attorney—Special Assistant United States Attorney, the Indians in large numbers went to his office in the city of Miami; that the defendant challenged the rights of this witness to deal with these Indians in relation to their land, and undertook to and did specify the kind of lease, mining leases, that he should or could take from the Indians, and that the Indians immediately became—

The Court: Now, let me see; your question was directed to this special matter as to whether this man was able to express an opinion with regard to the influence of the defendant upon these Indians?

Mr. Curry: Yes, Your Honor, but you had previously cut me off from showing that by direct statement—how the relation between he and the Indians had ceased, when  
147 this fellow appeared upon the scene; a man might exercise the—

The Court: Well, your question to which the objection was sustained indicated a desire to have this witness express his opinion as to the existence of that influence.

Mr. Curry: Yes.

The Court: I don't think that his opinion was competent. If there was a certain influence exercised by Mr. Ewert that would be for the Court to determine as to certain things done which might influence the Indians. These are matters of fact which might or might not appear in the evidence.

Mr. Curry: I think we are entitled to show by this witness the change of attitude of the Indians towards their advisor, and that they turned to the District Attorney for Advice, or to the defendant for advice, as a circumstance pointing to the fact that he did obtain and have an influence over these Indians.

The Court: Well, that will [develope] from what transpired after the defendant came there. Any opinion that this witness may have in regard to its effect—

Mr. Curry: I will ask a different question; I didn't understand the Court a while ago.

Mr. Ewert: May I ask, when you use the word Indian, what Indians you refer to?

The Court: Put the question again and we will see.

Q. Mr. Abrahams, to what extent, if any, were you  
148 advisor to the Quapaw Indians, prior and up to the time that Mr. Ewert came to Miami as Assistant to the Attorney General of the United States?

The Court: Now, I think he has gone all over that; I think you questioned him in regard to that heretofore, up to the time Mr. Ewert came there.

Q. Well, what happened with reference to your relations to the Indians following Mr. Ewert's coming to Miami?

Mr. Kornegay: Your Honor, we object as being incompetent, irrelevant and immaterial. I think we are not trying the proposition now, it seems to me, as to who had the biggest influence, the witness or the defendant, and it does not belong here.

The Court: Objection sustained.

Q. Do you know—you many answer this yes or no—do you whether or not there appeared in the newspapers, published and circulated in Ottawa County, frequent references to Mr. Ewert as the Assistant—as an Assistant to the Attorney General of the United States? A. Yes, sir.

Mr. Kornegey: That is objected to, Your Honor, as incompetent, irrelevant and immaterial.

The Court: The objection sustained.

Mr. Ewert: I move that the answer be stricken out; he already answered.

Mr. Curry: He answered that he knew.

The Court: I see the gist of the examination—

Mr. Curry: It is suggested that it might be proper to ask the Court here if the Court—whether or not the view will be

that we are not entitled to show by newspaper publication and the fact that they were circulated among the Indians, his influence over the Indians? It might save us from bringing—

The Court: At any rate, unless these newspapers and publications are brought home to Mr. Ewert, in my judgment they have no place here.

Mr. Curry: We expect to bring them home to Mr. Ewert, of course, but we think we can do that.

The Court: I am not going into that until they are brought home to him, at any rate; general newspaper statement.

### Cross-Examination

By Mr. Kornegay:

Q. Mr. Abrahams, you were speaking a while ago about Mr. Ewerts having had something to do with the Noble case, and you had something to do with it; who are the other defendants in it?

A. Something to do with what?

Q. Who are the other defendants in that Noble case?

A. I think it was Noble, Thompson and others, was the way it was headed.

Q. What Thompson was that?

A. A Doctor Thompson, a dentist at Baxter.

Q. Scott Thompson in it?

A. Oh, no, I don't think he was in it at all; if he was I didn't know it.

Q. Well, he was a defendant in the Blackhawk case, wasn't he \* \* \* Mr. Scott Thompson?

A. That went back to a division of royalties—I hadn't a thing in the world to do with that. It appeared that Mr. Bun Thompson was Mr. Blackhawk's attorney, and Mr. S. H.—Sam Smith of Baxter, was Mr. Cooper and Noble's attorney; they made a settlement—

150 Q. Well, I don't care for that; do you know whether Mr. Scott Thompson is one of the defendants in either one of these cases?

A. No sir, not that I know of.

Q. Coming now in regard to the land—

A. If he was attorney, I don't know nothing about it.

Q. Well, getting to something else now—coming to the land you testified about; you say about half of it was scrubby oak land and the other half bottom land?

A. No, I said about half [ot] it more or less was up-land and about half of it bottom land.

- Q. About how much of it was scrubby oak land?  
 A. I think about fifty or sixty acres as near as I can get to it.  
 Q. Where is the mine located?  
 A. A good part of that scrubby land is on the west of it.  
 Q. How long has it been abandoned?  
 A. Since about August, I think, or September of '16.  
 Q. When was it worked? A. Sir?  
 Q. When was it worked?  
 A. Well, I can't tell about that; I never went about it, only about the time it closed down.  
 Q. Do you know what this land has actually rented for since 1909, in any one year?  
 A. No, sir, that is out of my business.  
 Q. You don't know anything about it?  
 A. I don't know.  
 Q. Have you seen it since 1909? A. Oh, yes sir.  
 Q. How often are you over there?  
 A. I pass by the west side of it, and the north side of it every day or two, along the lane.  
 Q. Do you know anything about the land adjoining it and what that has rented for?  
 A. Not as agricultural land, I don't. I paid no attention to my neighbors.  
 151 Q. And you don't know anything about what the land itself is actually rented for that is in controversy, about which we are questioning?  
 A. Which land?  
 Q. Why, the Bluejacket land.  
 A. No, I don't know what the contract says between he and Mr. Ewert.  
 Q. You were a person with a good deal of importance with the Indians up there, I believe?  
 A. Not now.  
 Q. You were at one time? A. Yes, sir.  
 Q. Are you an Indian or a white man? A. Sir?  
 Q. Are you an Indian or a white man?  
 A. I am about one-third French, about one-third Dutch Jew, and about one-third Indian.  
 Witness dismissed.

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Mr. Thompson: Your Honor, I think it is admitted by the pleadings that this land was duly patented to Charles Bluejacket, but a denial or at least an allegation that they are not familiar with the form of the patent, sufficient to admit



the form that we set up; so I offer as evidence a certified copy of the Patent to Charle Bluejacket.

The Court: Certified copy of the patent to Charles Bluejacket is admitted. I take it it is not objected to?

Mr. Kornegay: No sir.

152 And thereupon, W. M. SMITH, being called as a witness on behalf of the complainant, sworn and testified under oath as follows:

Direct Examination

By Mr. Thompson:

Q. State your name? A. W. M. Smith.

Q. Where do you live, Mr. Smith?

A. Baxter Springs, Kansas.

Q. How old are you? A. Thirty-six.

Q. Married man? A. I am.

Q. How long have you lived at Baxter Springs, Kansas?

A. Since 1909.

Q. Do you know Mr. Paul A. Ewert? A. Yes, sir.

Q. How long have you known him?

A. I think since early in the year 1909.

Q. What has been your business in Baxter Springs? You came there in 1909?

A. Principally farm leases.

Q. Dealing in farm leases?

A. Dealing in farm leases and hay and grain.

Q. In what locality?

A. In Ottawa County, Oklahoma, in near Lincolnville, and near Quapaw.

Q. Dealing with Quapaw Indians?

A. Directly with the Indians, yes, sir, considerably.

Q. And the Quapaw Indians particularly?

A. Quapaw Indians, yes, sir.

Q. Are you acquainted with a great many of the Quapaw Indians? A. I am.

Q. Are you familiar with the location of the land known as the Charles Bluejacket allotment of land? A. I am.

Q. I wish you would describe to the Court if you can how that land lays and the quality of the soil, and so forth.

153 A. I would like to ask one question, does it cover two hundred acres?

Q. Yes sir.

A. I know how it lays but I don't know whether Mr. Ewert bought it all or not.

Q. Yes sir, two hundred acres.

A. I would judge that half of it is bottom land, and second bottom; it might be—wouldn't hardly be classed as up-land; half is bottom and second bottom.

Q. How is that bottom land with reference to the quality of soil?

A. Well, I consider that river bottom in the bend, as rich as any bottom land along Spring river; very rich.

Q. Since you have been employed or been engaged in the business of taking farm leases and hay leases in that community, have you become familiar with the rental values of land of this character? A. Yes sir.

Q. What is this land in your judgment worth per acre per year since the year 1909?

Mr. Ewert: Objected to as irrelevant, incompetent, immaterial; no foundation laid to show his knowledge of this particular land, or lands in that vicinity.

The Court: Sustained.

Q. Have you been upon this land, Mr. Smith?

A. I have since 1909, several times.

Q. About how many times?

A. Possibly as many as five times.

Q. Have you been upon the land recently?

A. Yes, within the last year.

Q. Then I ask the question again, what is your information, what in your opinion would be the fair rental market rental value—

154 The Court: You mean the fair cash rental value?

Q. I was just getting at that: the fair cash rental value per acre per year since the year 1909?

A. Well, from 1909 to about 1913, the bottom land should have rented for, from anywhere from two to three dollars an acre; and the upland that is not prairie grass, those years it would have brought a dollar or a dollar and a quarter probably, judging from the rents I paid on other farm leases; and since that time it would have brought—bottom land, would have brought three dollars an acre, I would judge, and a year or two, the up-land should have brought as much as two or two and a half an acre. The grass land, I would judge, it would be worth about a dollar and a half an acre, up-land, high land.

Q. Can you state to the Court about how much of the land is in hay?

A. I think there is at least forty acres, and some of it is used for pasture.

Q. And how much can you say was in this bottom soil?

A. Well, the bottom and second bottom, I would judge as close to a hundred acres.

Q. Have you been associated with anybody in Baxter Springs during the time you have been in the hay business?

A. Yes sir.

Q. Who was that? A. W. T. Apple.

Q. Have you ever had any correspondence with Mr. Ewert?

A. I think I have.

Q. I hand you a letter which I ask—

A. He has written me, I think I answered, one or two of the letters.

Q. I hand you a letter which the reporter will be asked to mark plaintiff's exhibit two, and ask you to state, to  
155 examine this exhibit, and state to the Court whether or not you received that letter in the ordinary course of the mail? A. Yes sir. I did.

Q. You know the signature attached thereto? A. I do.

Q. Whose is it?

A. Paul A. Ewert's, Special Assistant to the Attorney General.

Q. And what is the date of that?

A. January 19th, 1909.

Mr. Thompson: Now, if Your Honor, please, we have some letters here and we will want to use them in each case. I assume we can let them go in this record, and afterwards be copied and considered in the Redeagle case?

The Court: They can be introduced now, and application for use in the other cases—they may be offered, rather.

Mr. Thompson: We offer these in testimony at this time.

The Court: It is only five minutes to the noon hour gentlemen; I want to examine some of these authorities, and will during the noon hour. We will proceed no further now but take a recess until two o'clock.

And thereafter court convened pursuant to adjournment and further proceedings herein were had as follows:

The Court: There was an exhibit offered before the noon hour, which was being examined by counsel—

Mr. Ewert: No objection to the letter as a letter, but it is objected to as being incompetent, irrelevant and immaterial;

156 it is incompetent because—and is immaterial under this sale, in my judgment, because the sale was one which was made through the office of the Secretary of the Interior.

The Court: Perhaps I had better see it and then hear you on it. This has no relation to this case. I have given this matter some careful consideration during the noon hour. I understand a little more definitely than I did on the other presentation this morning, just what there is in this proposition. I have read very carefully the petition, or bill, in this case. It seems to be based upon three separate propositions: first, that the defendant Ewert was incapacitated to buy or deal in this land from the Indians under the provisions of the revised statutes to which my attention was called, because of his official position with the United States, that, as pleaded, of a Special Assistant Attorney General, acting under a special commission from the Attorney General of the United States. It is further insisted that this transaction should be set aside because the defendant discouraged competitors; interfered with persons who were inclined to bid more for the land and secured his own bids as the sole bid because of his discouraging other bids. Third, that certain of these plaintiffs who were minors at the time of the transaction, that as to them the proper steps had not been taken in the probate court to warrant the passing of title to this property. Now, we are proceeding upon that phase of the case which relates to Mr. Ewert's official position with the United States. It is alleged in the petition, as I say, that he is a Special Assistant Attorney General of the United States, under special appointment from the Attorney General. He, in his answer, admitted his official connection with the Government as Special Assistant Attorney General, and has set up what he states is his letter of commission. To that extent his admission is admitted. Now this land was sold under the Act of Congress of 1902 which permitted these lands of the heirs, belonging to the heirs, of these Indian allottees, to be sold with the consent of the Secretary of the Interior. Pursuant to that Act, written rules and regulations were promulgated by the Secretary. Those rules and regulations are attached to the answer of the defendant and I examine it. I assume that they correctly set forth the rules and regulations which relate to this Act. The Court takes judicial knowledge of such things, but of course has to have them before him to know the details of them. Is there any question that these rules and regulations set forth in the answer—as to whether they are correct?

Mr. Thompson: I don't think there is any question. We haven't examined these carefully but we are not raising any question on them.

The Court: Now, your petition in the case alleges that the land in this case was sold according to these rules and regulations; that a petition for the sale of these lands was filed with the Indian Agent, and that the lands were sold to the highest bidder, and that the deed was approved by the Secretary of the Interior. You are basing your attack, so far as the defendant's official relation is concerned, on the fact, on the ground, 158 that he was [prohibited] from buying because he was such Special Assistant Attorney General. Now, that is a question of law. After his official connection with the Government is established, then it becomes a question of law as to whether or not he is prohibited by the Act upon which you rely. Now, you say he was specially commissioned; if he was specially commissioned, his commission will determine what his activities were to be; not what newspapers said about him; not, in my judgment, what he himself may have assumed, or may have represented to others. If he assumed to have duties which his commisison really did not give him, in my judgment that cut no figure in this case so long as it doesn't appear from the pleadings that whatever assumption he made had anything whatever to do with the sale of this property or affected in any way the sale of this property under the rules and regulations provided by the Secretary. Therefore, it seems to me that on reflection that letters of this character as to what he did or what he directed—assumed to direct others to do in the line of what he conceived to be his duty, is not material here and that we are but encumbering the record with a whole lot of stuff that has no place in the record. On this feature of this case relating to Mr. Ewert's official connection with the Government, you may show if you can see that it was different—that he had a different commission from the one he has admitted here in the answer, that may be shown. I think what the Court should know in this case is just what was his official status; not what he said it was; not what he represented it to others, because it doesn't appear that these Indians petitioned to be allowed to sell their lands because of anything which he did. It 159 is true the plaintiff urges—contends that it was Ewert's duty to advise the Secretary of the Interior with regard to the value of these lands; as to whether that duty was imposed upon Ewert, certainly must be determined from a consideration of what his official connection with the Government was; not what he said it was but what it really was; and I am inclined to think that we are rambling now—

Mr. Curry: If the Court will allow me, I would like to briefly state our views; just at this point—I just wanted to state briefly: this is not a suit to recover the penalty. The primary question involved here, although we have not used the term, is contrary to public policy for Mr. Ewert to make the purchase. Now, our view is that even though he had a limited commission, if he assumed to have a broader commission, then acts that he did within the pervue of his assumed authority tending or bringing about any breach of the policy fixed by the Government, it would be contrary to public policy.

The Court: How would it have any relation to this particular transaction?

Mr. Curry: It would in this way: suppose he assumed to go to Miami and had no authority at all; but he advised—put up a United States flag over his office and advertised that he was commissioned by the Government to protect the Indians and that got circulated among the Indians; then suppose the

Government makes a sale, not brought about [—] him at 160 all, and he goes in and bids. Our view of the law is, and

I think we are sustained by the authorities, is that his act in having brought about that condition, having brought about that impression in the minds of the Indians that he did have authority and was protecting them, would be as contrary to public policy as though it was specifically forbidden by an express statute.

The Court: But I can't see how it could have any relation to this express transaction, because the law [befor] Mr. Ewert came there provided how this Bluejacket could sell this land, by petition to the Indian Agent. Mr. Ewert comes; he makes all sorts of representation; those reports have no relation so far as the pleadings show, to this petition. These Indians petitioned the Indian Agent, or the Secretary of the Interior through the Indian Agent, pursuant to the rules and regulations for authority to sell this land; that petition was entertained by the Secretary of the Interior; pursuant to the rules and regulations, the Indian Agent was directed to advertise as provided; to accept bids; to appraise the land, which he did; that appraisal was presumably submitted to the Secretary pursuant to the regulations; the bids were accepted, as you say, the bid from Mr. Ewert, the highest bidder, was accepted and the land sold to him. Now, you charge no connection of Ewert with this transaction unless it be his failure to do what you say he ought to have done, advise the Secretary of the

Interior that the price that he was bidding was not sufficient.

161 Mr. Curry: We have asked the question on the theory that it would be analogous to an administrator who comes into court and makes application to have land of his ward sold. \* \* \* \*

The Court: I shall have to rule out anything of a general nature, and the objection to that will be sustained.

Mr. Curry: Well, we will make an offer.

Mr. Thompson: We might shorten this, Your Honor, by submitting all these to counsel and offering them at one time.

The Court: Are they all of the same character?

Mr. Thompson: Yes sir.

The Court: Same general character?

Mr. Thompson: Yes sir.

The Court: Well, unless you gentlemen want to take time to examine them, you may note your objections and I will rule them out on the statement of counsel.

Mr. Kornegay: Well, we desire to object to the introduction in evidence of each of the letters for the reason that the contents of these letters are immaterial, irrelevant, and incompetent in the matter under inquiry.

The Court: The objection is sustained and exceptions noted. Let them be identified by letter or some other mark. Now, I am assuming that you are correct in stating to me that they are letters similar to the one offered?

Mr. Thompson: They are.

The Court: Relating to his activities in the removing of clouds from the land?

162 Mr. Thompson: Yes sir.

The Court: Cancelling of these leases?

Mr. Thompson: They are letters of the same character.

The Court: Alright.

Mr. Thompson: The plaintiff offers for identification the letters marked plaintiff's exhibit 2, which has been previously offered, and asks the stenographer to mark each of them for identification plaintiff's exhibits, respectively, 3 to 9. I sup-



pose it is agreed that these letters, Mr. Ewert, were written by you?

Mr. Ewert: Yes sir, it is admitted that those are the letters written by me.

The Court: It may be noted in the record then, that the genuineness of these letters is not questioned but that they are objected to on the grounds just stated in relation to the letter offered, and that objections are sustained and plaintiff's exceptions are noted.

The Court: Any cross-examination of this witness?

Mr. Kornegay: No questions, Your Honor.

Witness dismissed.

Mr. Thompson: Your Honor, that will practically end our case, except the identification of some newspaper articles furnished by Mr. Ewert and we want to make an offer of those. I suppose under Your Honor's ruling they will not be admitted?

163 The Court: Those are the ones that were suggested this morning?

Mr. Thompson: Yes sir.

The Court: Under the ruling now, they would not be admitted anyhow.

Mr. Thompson: We want to make the offer.

The Court: Well, you may make the offer.

Mr. Thompson: The parties to identify them are not here.

The Court: What about the proof as to the guardian sales?

Mr. Thompson: I think the burden is upon the defendant in that case.

The Court: I don't think. I think the sale is presumed to be regular unless it otherwise appears. It is charged in the petition that there was no order by the probate court authorizing the guardian to make this sale; it is denied in the answer. It is alleged in the answer now, that there was a petition made by the guardian for leave to make this sale and an order by the court granting leave to the guardian to join in this sale.

Mr. Thompson: Yes sir.

The Court: Now, do you concede that there was such order by the Court?

Mr. Thompson: I think so. Our point is this, Your Honor; that that sale is void for the reason that it was not conducted in pursuance to the statute of Oklahoma, and then afterwards submitted to the Secretary, and there is no question of  
164 fact—

The Court: Well then, we will assume that the statement—read that answer; possibly you will agree that that—

Mr. Kornegay: Mr. Thompson, you have got the record right there; simply read it into the record and let it go; we have no objection to offer to the record. I understand that is the record disclosed by the books and everything.

Mr. Thompson: I think we can agree without reading all this into the record.

The Court: Let me ask you this; is there in the files there, the original petition on the part of the guardian to the probate court for authority to join in this sale?

Mr. Thompson: I think so.

The Court: Let's get at that now; now, is there any order in the files of the probate court pursuant to that petition?

Mr. Thompson: Yes, sir.

The Court: Well now, that may go in. Now then, was that the last transaction in the probate court in regard to the matter?

Mr. Ewert: No sir, the report of the sale.

The Court: Then what is the next step in the probate sale? If there is a report of sale that may be offered.

Mr. Ewert: I would like very much, Your Honor,—they have made so many charges in here, now, the counsel has unusual proof in his possession—I ask that he introduce  
165 it in evidence. First the petition for sale; and second, order of sale of course; third, petition presented to the probate court asking the Secretary of the Interior to sell the land.

The Court: I understand they are ready to be offered now?

Mr. Ewert: Oh, yes.

Mr. Thompson: There is no objection to just offering these papers?

The Court: They may be offered, and then if they are originals and it is necessary, subsequently to substitute copies, that can be done. Let them be admitted.

Mr. Thompson: I suppose it is agreed that they may be admitted and the papers marked plaintiff's exhibit 10, constitute the papers and original files in the case and in the matter of the estate of William, Blanche, Amy and Clyde Blue-jacket, minors, and pending in the County Court of Ottawa County, Oklahoma, consisting of the petition by the guardian and the order of the sale made thereon by the Court, and the report of the sale by the guardian to the same Court, and that these papers constitute the only orders made in said cause respecting the sale of said lands described therein?

The Court: Let them be admitted and put right in the record; they are offered and admitted by the Court as a part of the evidence in this case. Now, I understand that those papers now offered, it is conceded, constitute all the record in relation to this transaction in the probate court; that  
166 is so far as the petition and orders made of the sale are concerned?

Mr. Ewert: Yes.

The Court: There is no attack on the authority of the guardians, of their appointment, or their capacity to act. Now, have you any other proof aside from the newspaper articles which you want to offer?

Mr. Thompson: I think not, if Your Honor, please.

The Court: Have you any proof on behalf of the defendant?

Mr. Korneygay: Your Honor, at this time, we want to ask the Court, in the nature of a demurrer to the evidence, to find the issues on the proof in favor of the defendant.

Mr. Thompson: We will want to make offer of the newspaper articles and then that will complete our case.

The Court: If you have the party here to offer them; the only things that are to be offered now is the newspaper articles?

Mr. Thompson: Yes sir.

The Court: Do you gentlemen desire to stand upon the proof made by plaintiff and move for judgment for the defendant?

Mr. Kornegay: Well, we desire to say that this is insufficient to entitle him to a verdict and ask the Court at this time to—

The Court: Alright, let the record show that the defendant rests and asks for judgment.

Mr. Thompson: If Your Honor please, we would like to ask permission of the Court to inquire a few questions of the defendant.

The Court: Alright; the defendant will take the stand.

And thereupon, PAUL A. EWERT being first duly sworn, testified as follows:

Direct Examination

By Mr. Thompson:

Q. Mr. Ewert, you are the defendant in this case?

A. I am.

Q. In your answer filed herein, you set out a copy of a paper purporting to be the permission issued to you on October, 23rd, 1908, signed by Charles J. Boneparte, Attorney General, and it shows on its face that you are commissioned to come to the Quapaw Agency and prosecute suits to set aside certain deeds. You state in the answer just prior to the setting forth of the copy, that you were commissioned to set aside marshal's deeds; at what time did you come to Ottawa County in pursuance to that commission?

A. I took the oath of office, I think on the 10th day of November; I think the commission is on the —I took the oath I think, on the 10th and came to Oklahoma—

Q. What year was that?

A. In 1908; and I went, I think, to Muskogee, and remained there until probably the 25th; arrived in Ottawa County probably along about the—pretty close to the first of December 1908 and sometime during the month of December 1908, I opened an office after going back to Muskogee and getting office furniture and things of that kind.

Q. You opened an office in Miami? A. In Miami.

Q. Did you have any written instructions from the Attorney General's office? A. No.

Q. As to what you were to do? A. No.

Q. When you arrived in Miami? A. No.

Q. Then, this letter of commission which you set up in your answer, is the only written instructions that you received? A. The only written instructions.

Q. Did you ever receive any oral instructions from the Attorney General's office as to what your duties were in the Quapaw Agency? A. Up to what date?

Q. At any time?

A. In 1910 the nature of my duties was changed but that of course would be immaterial as to—

The Court: What is the date of this transaction?

Mr. Thompson: This deed, I think, was made in March 1909.

The Court: March 1909; now, or 1910—1909? A. 1909.

The Court: Then, as to what transpired subsequent to the making of the deed would be immaterial.

A. The oral instructions that I received were had—you asked me if I received oral instructions?

Q. You stated that was later.

A. No, I received oral instructions at the time, before I came out here.

Q. From whom? A. From the Attorney General.

Q. And what were those instructions?

A. Why, there had been a bunch of—I call them a  
169 bunch of so-called marshal's deeds; sales that were made by the United States District Court wherein the United States Marshals were directed to make deeds to certain lands. Those suits were instituted and the only suits that were instituted during the time mentioned here in the petition by me, and my [appointed] at that time, by agreement I was to be transferred to another line of work. It was thought then within three months but it dragged out to a longer period.

Q. Then, these were the only instructions that you had prior to the time that you took this deed? A. Yes.

#### Cross Examination

By Mr. Kornegay:

Q. Mr. Ewert, did the Attorney General at the time that you made this purchase or before the deed was delivered to you know of your purchase?

A. He did.

Mr. Thompson: Just a moment, I object to that.

The Court: Objection sustained.

Mr. Ewert: The defendant offers to show by himself that prior to the time that the sale was made—

The Court: Now, just a moment, Mr. Ewert. If you are going to introduce proof, you might just put it upon the stand here. You gentlemen suggested that you probably had nothing to offer. Instead of making your offer, proceed with your proof, and if there is any objection, I will hear it.

Mr. Ewert: I thought the objection was sustained.

The Court: In relation to this cross examination.

Mr. Ewert: He asked to put me on the stand for my own purposes.

Mr. Kornegay: No, Mr. Thompson put him on and on cross examination I asked him if he had instructions from  
170 the Attorney General.

The Court: I thought Mr. Ewert was proceeding for the defense to offer some proof.

Mr. Thompson: Now if Your Honor please, I would like to close this if we can, but I can't do it without identifying these.

The Court: Have you the newspaper reports here? Let me see them and see what they are; let them be examined by counsel. It might be that some agreement may be reached.

Mr. Kornegay: Your Honor, I expect this is true, but I don't think it is relevant.

The Court: Well, I have agreed with you on that proposition; I think the record may show that the plaintiff offers these newspaper articles in proof and offers to prove their authenticity, and the—

Mr. Kornegay: We don't concede that we had it but it appears that it is in the newspaper.

The Court: I didn't understand that they purported to be letters from Mr. Ewert. What I had reference to, as to the authenticity, is their proof that they were published in the paper in his, Mr. Ewert's statement, but offer that certain newspaper articles offered were published in these newspapers at a certain time.

Mr. Thompson: But we will go further, Your Honor; we will prove that the articles were furnished in typewritten form by Mr. Ewert.

The Court: You make that offer of proof too, the same ruling would be in regard to that; get your offer in  
171 shape.

Mr. Thompson: The plaintiff offers as evidence an article that appeared in the Miami Record Herald on June 1st, 1909; a newspaper published in Ottawa County, Oklahoma, said article being on the first page thereof and being the first column on the left hand side of said page and being headed "To Quiet Title to Indian Lands. Special Assistant Paul A. Ewert States Position of Government;" and further offers to prove that this article was written by the defendant in this case and furnished said newspaper and requested same to be published therein.

Mr. Kornegay: Well, if you can prove that we had it, well go ahead and prove it. The paper that you have there, we admit that the article appeared in.

The Court: You admit that article appeared in that paper?

Mr. Kornegay: Yes sir.

The Court: But you don't admit that it appeared at Mr. Ewert's—

Mr. Thompson: I don't know that we can do anything at all until the Editor is here.

The Court: If the Editor was here and you offered him to prove that Mr. Ewert caused that to be published, under the ruling which I have heretofore adhered to, it would have to be ruled out.

Mr. Thompson: I understand that but we want the offer to go so far as we are offering to make that proof.

Mr. Kornegay: And we object to the offer to make proof, Your Honor, as incompetent, and immaterial.

172 The Court: You will object, if the witness is produced, object to his testifying in regard to it; I think the record can probably be made up then; if your witness comes here that offer can be made; in the meantime, I can hear you gentlemen on the law.

Mr. Thompson: I think we can offer that now.

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And thereupon M. C. FARKENBURY being called as a witness on behalf of the complainant, sworn and under oath testified as follows:

Direct Examination

By Mr. Thompson:

Q. You may state your name.

A. M. C. Farkenbury.

Q. Where do you live, Mr. Farkenbury?

A. Miami.

Q. How long have you lived in Miami?

A. About fourteen years.

Q. Do you occupy any official position at the present time?

A. That of Post Master.

Q. What was your business during the year of 1909?

A. I was in the newspaper business.

Q. What paper did you own and publish if any?

A. I owned and published the Record-Herald, Miami Record-Herald.

Q. Did that paper have a daily circulation throughout Ottawa County?

A. Yes sir.

Q. Could you state whether or not you had a great many of Indian subscribers?

A. Why, quite a number; not any big number.

Q. Do you know Mr. Paul A. Ewert?

A. I do.

Q. Could you state whether he was one of your subscribers?

A. He wasn't a regular subscriber, I don't believe; possibly he did take the paper a short while.

173 Q. I hand you a newspaper file and ask you to examine this file and state to the Court what it is.

A. This is of date January 1st, 1909, Miami Record-Herald.

Q. I wish you would look at the article on the front page.

A. First article? The first article here is under the heading of quieting titles to Indian lands.

Q. Now, I would ask you Mr. Farkenbury, where you got the copy for that article.

A. Well, my recollection is that it was furnished by Mr. Ewert.

Q. That is in typewritten form?

A. Typewritten form.

The Court: What is the date of that?

A. January 1st, 1909.

Mr. Thompson: The plaintiff now offers in evidence the article identified by the witness and asks that the stenographer marks same as its exhibit II, and copies the same in the record.

Mr. Ewert: I think we will object to that, Your Honor, as incompetent, irrelevant and immaterial.

The Court: Well, I have to examine it—the objection is sustained.

Mr. Thompson: Exceptions; that is all, Your Honor.

Witness dismissed.

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And thereupon, S. A. ROBERTS being called as a witness on behalf of the complainant, sworn and under oath, testified as follows:

#### Direct Examination

By Mr. Thompson:

Q. What is your name?

A. S. A. Roberts.

Q. Where do you live, Mr. Roberts?

A. Miami, Oklahoma.

Q. What is your business?

A. Publishing a newspaper.

Q. How long have you been in that business?

A. I have been in the business in Miami since the first day of January 1910.

Q. Did you keep a file of your newspapers, Mr. Roberts?

A. I do.

Q. What paper do you publish?

A. I publish the Ottawa County Republican and Miami Daily Republican.

Q. I hand you one of your files and ask you to examine the two papers turned down, in reference to an article "Ewert Digs Up Unlawful Leases" and state whether or not that is a part of your files and a copy of your paper that you have been publishing.

A. They are.

Q. And what is the date of that paper that is folded down there?

A. February 21, 1910 and February 22nd, 1910.

Q. Did this paper of yours, known as the Miami Daily Republican, have a daily circulation through the County of Ottawa?

A. Yes sir.

Q. I will now call your attention to the newspaper article appearing, commencing on the sheet of February 21, 1910, of the Miami Daily Republican, and continued in the issue of February 22nd, 1910, said article being headed "Ewert Digs Up Unlawful Leases" and ask you to state where you got the copy for that article if you remember.

A. Can I answer that in general?

Q. Answer it the best way you can.

175 A. All I can state Your Honor with reference to the articles in question is this: that Mr. Ewert from time to time there brought in the manuscript, or called my attention to articles and stated that they were matters of general interest, and ought to be published. I was a stranger in the town at the time, having come there only January 1st, and wouldn't have known otherwise, whether they were of any interest to the public, this being one of others.

Q. You published a great many articles for Mr. Ewert, did you?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. I hand you another roll of files of the Republican and ask you to state what distinction is there between the Miami Daily Republican and the weekly, if any.

A. One is a daily and the other a weekly.

Q. I hand you this file and ask you to state to the Court what that is and what the day is.

A. This is a weekly paper of Ottawa County Republican, dated Monday, January 17th, 1910.

Q. I call your attention to an article on the front page of this issue of the paper, headed "To Annul Leases On Five Thousand Acres", being the second column from the left hand side of the paper, and ask you to state who furnished that copy to you?

A. I can only reply in the same general way that I did before, that as far as identifying and saying on oath that Mr. Ewert furnished that identical article—you see, this is January 1917, I had only been in that town seventeen days; I would have had no reason to have any knowledge that such articles were of any interest other than the fact that Mr. Ewert called my attention to them, or furnished copies,

176 one or the other—for these as well as the others.

Mr. Thompson: The plaintiff offers in evidence the article identified as being of the issue of Miami Daily Repub-

lican on February 21, 1910 and continued into the issue of February 22nd, 1910, headed "Ewert Digs Up Unlawful Leases."

The Court: Of the same general character of the one already ruled upon?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial, and also that they antedate by more than a year a time when the Bluejacket land herein question was purchased by defendant.

Mr. Kornegay: You mean afterward?

Mr. Ewert: Yes, afterward.

The Court: Objections sustained and exceptions noted.

Mr. Thompson: We also offer in evidence the article identified by witness as being of date January 17th, 1910, headed "To Annul Leases on Fifteen Thousand Acres".

The Court: That is the same character?

Mr. Ewert: The same objections.

The Court: Objections sustained and exceptions noted.

Mr. Thompson: I believe that is all.

Witness dismissed.

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177 Mr. Thompson: Your Honor, we would be glad to furnish a true copy of these articles to the reporter, or leave it with the reporter, with—

Mr. Kornegay: Let the editor furnish a copy.

The Court: Alright; if you secure from the editor certified copies of the several articles identified so they may be inserted in the record, we will rely upon the editor to furnish the copies.

Mr. Thompson: That is all.

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And thereupon, evidence upon behalf of the defendant is offered as follows:

PAUL A. EWERT being called as a witness, under oath testified as follows:

Direct Examination

By Mr. Kornegay:

Q. Mr. Ewert, if there is anything in connection with these matters that you desire to state, you may proceed.

The Court: I don't want to open this up where objections will be—I think you better interrogate him.

Q. You are the defendant, are you Mr. Ewert?

A. I am.

Q. You filed these answers? A. I did.

Q. In the answers it is stated here that the Attorney General knew of this purchase which you made; I wish you would tell the Court what there is to that.

Mr. Thompson: I object to any statement made to the Attorney General as hearsay.

The Court: Sustained.

Mr. Kornegay: Exception.

178 Q. I wish you would state to the Court whether or not the Department of Justice formed—was informed in an official way of the fact that you had purchased this land?

A. They were.

The Court: Just a moment.

Mr. Thompson: Objected to for the reason that is incompetent, irrelevant and immaterial, hearsay statement from the Department, and moreover his acts, if he was not qualified to purchase, no statement from the Secretary of the Interior could qualify him.

The Court: Sustained.

Mr. Kornegay: Exception.

Q. I wish you would state whether or not before the deed was approved by the Secretary of the Interior it was known to that official, that you P. A. Ewert, occupied such position that you did with reference to the Department of Justice, had become the purchaser?

Mr. Curry: Object to that as incompetent, irrelevant and immaterial.

The Court: He may answer that.

A. Yes.

The Court: Objection overruled and exceptions noted.  
 Witness dismissed.

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Mr. Ewert: The defendant Ewert offers to prove by himself as defendant that prior to the purchase and sale of the land involved in this controversy, he consulted his superior officer, the Attorney General of the United States, and the Attorney General advised him that he saw no reason why he should not bid on this land. The plaintiff further offers to prove—the defendant further offers to prove by himself as defendant that before this land was purchased and before the deed was approved by the Secretary of the Interior of the United States, he talked with both the Commissioner—the Commissioner of Indian Affairs of the United States and the Assistant Secretary of the Treasurer of the United States, with reference to the propriety and the legal right of himself to bid in the said land, and that if said officers saw no legal—

The Court: Well now, you are making an offer to prove there, which is not necessary in an offer to prove—I sustained the objection as to what transpired between you and the Attorney General. You were asked if the Secretary of the Interior knew you were the purchaser before proving the deed and you stated he did.

Mr. Ewert: I will take the stand again.

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And thereupon PAUL A. EWERT being recalled further testified as follows:

#### Redirect Examination

By Mr. Kornegay:

Q. Well, go ahead.

The Court: This is over your objection and exception, as to what transpired between this defendant and the Secretary of the Interior or Commissioner of Indian Affairs, or other officer connected with this sale before the approval of it.

180 A. I was in Washington, D. C., shortly after I made the bid on the Bluejacket land here in question; that I personally conferred with the Assistant Secretary of the Interior, Frank Pierce, who had this matter in charge, and with the Commissioner of Indian Affairs, relative to the propriety and legality of making the bid, and that in that conversation

with them I stated that if it was not legal and proper, I would withdraw my bid, and thereafter—

The Court: Now, this is going into something that I think is outside the range. I permitted the answer to be made to the question with regard to whether or not the Secretary [know] that this defendant who was the officer of the Department of Justice, was the purchaser. He answered yes; I will not admit the whole range of conversation because I don't think that is competent.

A. Let me state further that both the Secretary of the Interior and the Commisisoner of Indian Affairs knew of my appointment of Special Assistant to the Attorney General, and of the capacity and manner of my employment in the Quapaw Agency in which the land was situated.

Mr. Curry: We wish to strike out the statement of the witness with reference to what the Secretary of the Interior and his Assistant knew, for the reason that the same is incompetent, irrelevant and immaterial; and for the further reason that it is mere hearsay; and that the office of the Secretary of the Interior of the United States can speak only by his  
181 written record as to matters affecting the rights of third parties; and any statement by the Secretary of the Interior made to the defendant would be extra official and not competent evidence to affect the rights of the plaintiff in this case in any way.

The Court: The motion addressed to the last statement made by the—narrative statement made by the witness, will be sustained; the statement will be stricken.

Mr. Curry: I made the same motion as to the first part of the statement and for the same reason.

The Court: Now, the motion is addressed to the entire statement, beginning where the stenographer began to read, from there on; the motion will be sustained and exceptions noted; stricken from the record and exceptions noted.

Mr. Curry: Now, we object to the offer, although it has been excluded, I want the reason to go in there; we object to the offer of the witness, the defendant in this case, to State what the Attorney General said to him, for the reason that the Attorney General of the United States is not authorized to speak as to any matter of law or fact, except to advise the head of a department upon a written request, and is then not authorized to make any statement unless it relates to some law



or act, which would affect the rights of the Secretary himself, or impose some penalty upon the Secretary for acting contrary to a proper construction.

The Court: You just desire to have the record show your reason for objecting them. The Court has excluded it.

Mr. Curry: Yes sir.

182 The Court: Any further proof?

Mr. Ewert: Plaintiff offers to prove that at the said conversation between himself and Franklyn Pierce, the Assistant Secretary of the United States, and the Commissioner of Indian Affairs, that the Commissioner and the Secretary said to him that they knew of his employment as Special Assistant to the Attorney General of the United States, and the capacity in which he was serving in the Quapaw Agency, and that they saw no legal objections to him purchasing the said lands at public sale to the highest bidder, under the rules and regulations of the Secretary of the Interior of the United States, and that the deed would be approved.

Mr. Curry: We object to the offer for the same reason heretofore assigned.

The Court: The offer is made, I presume, pursuant to objections sustained by the Court heretofore to other matters?

Mr. Ewert: Yes sir.

The Court: Alright. The same objection may be noted as to the offer in the record.

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And thereupon, IRA C. BEAVER, being called as a witness on behalf of the defendant, sworn and under oath testified as follows:

#### Direct Examination

By Mr. Ewert:

Q. State your name Mr. Beaver. A. Ira C. Beaver.

Q. What position do you now occupy with the Federal  
183 Government if any.

A. United States Indian Superintendent, Quapaw Indian Agency.

Q. How long have you held that position?

A. Since January 6th, 1908.

Q. Did your office, through yourself, conduct the matter of the sale of the Bluejacket land involved in this controversy to the defendant Ewert? A. I did.

Q. State to the Court when this land was first offered for sale under a petition by the heirs, plaintiffs in this case, if such petition was made.

Mr. Curry: We object to that for the reason that the offer for sale would have been in writing and the writing would be the best evidence.

The Court: When the offer was made?

Mr. Ewert: Yes sir.

The Court: He may answer.

A. I had so many of those transactions that it would be impossible—physically impossible for a man to retain it all in his mind.

The Court: Have you a record in regard to that?

A. Yes sir, I have.

Q. Refreshing your memory from the record, please state the date when the petition was filed?

A. Page 49 of the book of record of sales kept at the Quapaw Agency which is a part of the record of the Quapaw Agency, sale number—

The Court: You asked when that first offer was made.

A. This record shows that the petition was made June 20th, 1908. It was received in my office the same day and it was listed for sale on the same day; bids to be opened August 1908.

184 Q. Pursuant to that petition were the lands offered for sale? A. Yes sir; offered for sale.

Q. Prior to being offered—

Mr. Curry: Do you have a record which shows whether it was offered for sale or not?

A. Yes sir, I have a record here of the bids made on it.

Q. The date of the first offer of sale was what? You have stated it. A. Offered for sale?

Q. Yes. A. August 17th, 1908.

Mr. Curry: We object and move that the evidence with relation to this sale be stricken out for the reason that it was not the offer pursuant to which the sale was made.

The Court: Overruled.

Q. State to the Court whether or not pursuant to that petition and the rules and regulations promulgated by the Secretary of the Interior of the United States you caused the land to be appraised after the manner required by the rules and regulations of the Secretary of the Interior? A. I did.

Mr. Curry: Object to that as a conclusion of the witness.

The Court: That would be a conclusion whether he caused it to be appraised in accordance with the rules. Answer whether you cause it to be appraised or not.

A. Yes sir, I did.

Q. Was that appraisement a secret appraisement?

A. Yes sir.

Q. Was the Appraisement ever made public to any person prior to the time that the deed was executed and delivered and approved, except the Department of the Interior and officials of your office?

A. No. sir, never was.

Mr. Curry: I object because it is leading.

The Court: What is the—I don't see the purpose of this. What has been proven in this case that you desire to meet with this proof?

Mr. Ewert: This, Your Honor—I think you will agree with me that here is case that has got to go into the record and charges a most flagrant violation of my duties, and I wish to show that months before I was appointed to this position, that this land was offered for sale—

The Court: Presumably this sale was made in accordance with the rules and regulations; if it was, there was no publicity made.

Mr. Curry: We object to the testimony for the reason that if it was advertised in perfect compliance of law it would not qualify Mr. Ewert if he was otherwise disqualified from making the purchase.

The Court: No, and presumably this sale was made by the Secretary according to the rules and regulations, and until some attack is made upon the sale for that reason, it is unnecessary to encumber the record with this evidence.

Mr. Ewert: Do I understand the Court to say that any—

The Court: So far as what was done in relation to the rules I think is absolutely incompetent; I permitted you to show

when the petition was filed for the sale of this land; you have that in the record, and presumably this sale was made  
186 pursuant to the petition. It is so plead and so admitted in the answer.

Mr. Ewert: Yes, but if this matter comes to a court's sitting as a court of equity there, then they have only before it the things that appear of record, and I think as a matter of personal—

The Court: No, we are not going to let anything go into here as a matter of personal privilege. I am going to draw the line—

Mr. Ewert: Yes, I know, Your Honor; we desire to prove by Ira C. Beaver, now on the stand, that the lands here in question were advertised pursuant to the rules and regulations of the Secretary of the Interior of the United States for seven days consecutively, and that during all of that period of time up until the time of sale to P. A. Ewert, that the biggest bidder on said lands was a bid made by Adelbert Hughes, who caused the said lands to be advertised for sale through the heirs, and the amount of said bid was four thousand dollars; that the defendant made three bids on said land, the first bid being in February 1909; that the said bid was in the neighborhood of forty six hundred dollars; that the bid was rejected because below the appraisalment; that thereafter he bid again on the said land and again the amount of his bid was below the appraised value and rejected; that he made a third bid of five thousand dollars on said land, all under the sales above stated, and that at said sale he was the highest bidder.

187 The Court: The offer may go in the record; the Court rules that the testimony offered is incompetent, irrelevant and immaterial in this case. You may have your record.

Mr. Ewert: That is all.

Mr. Korneygay: I wish to ask one question, Your Honor.

By Mr. Korneygay:

Q. Mr. Beaver, what is this land actually appraised at by the Interior Department? What does it show there, if it is in this record?

A. I will have to refer to another record before I can tell you.

Mr. Thompson: Objected to as incompetent, irrelevant and immaterial; and for the further reason that the testimony offered by plaintiff as to value of the land at that time was excluded.

The Court: Objection sustained; exception noted.

Witness dismissed.

And thereupon HORACE D. DURANT being called as a witness on behalf of the defendant, sworn, and testified under oath as follows:

### Direct Examination

By Mr. Ewert:

Q. You may state your name, Mr. Durant.

A. Horace D. Durant.

Q. Are you acquainted with one Adelbert Hughes?

A. Yes sir.

Q. Were you formerly Superintendent, or Disbursing Agent of Quapaw Agency? A. Yes sir.

188 Q. When did you leave the service?

A. January 1st, 1908.

Q. At that time state whether or not one Adelbert Hughes came to you and asked to have guardian appointed for the minor Bluejacket heirs, minor heirs of Charles Bluejacket, with a view of filing a petition with the Superintendent and Disbursing Agent, or the Secretary of the Interior of the United States, asking to have this Bluejacket land here in controversy offered for sale?

A. Yes sir. Mr. Hughes came to me sometime about the date you mentioned. I don't remember the exact date.

Q. In the month of January?

A. For that purpose that you mentioned.

Q. And pursuant to that request of Mr. Hughes, did you consult the heirs and prepare the petition for guardianship?

A. Yes sir.

Q. Did you prepare the petition for Mr. Hughes and the guardian offered here in evidence as exhibit, plaintiff's exhibit 10?

The Court: What is the question about those now, Mr. Ewert?

Mr. Ewert: Well, I wish to show that I was in no manner connected with the transaction causing this land to be offered for sale.

The Court: There is nothing in the record that indicates that you were, so you needn't to take up the time of the Court.

Mr. Ewert: That is all, Mr. Durant.

Witness Dismissed.

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189 The Court: Is that the proof of the defendant?

Mr. Ewert: That is all.

The Court: Any rebuttal?

Mr. Thompson: No sir.

Mr. Kornegay: Your Honor, at this time we would like to ask Your Honor to make a finding in favor of the defendant Ewert.

The Court: Well, I will hear the plaintiff briefly in argument, and I will hear you gentlemen and decide this matter.

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190 (Plaintiff's Exhibit 1.)

Office of the County Clerk.  
Miami, Oklahoma.

Certificate of True Copy  
(Book 9, Page 504)

State of Oklahoma,  
County of Ottawa,—ss.

To All Whom This May Concern,—Greeting:

This Is To Certify, That the within and attached is a true and correct copy of a certain instrument that is on file and of record of this office, and I do so certify.

Witness my hand and official seal as such County Clerk, of above County and State, this 14th day of March, A. D. 1917.

J. A. WALKER,  
County Clerk.

(Seal)

By J. C. Briggs,  
Deputy.

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191 The United States of America to Charles Bluejacket,

Patent:

(Certified Copy)

No-16

The United States of America: To All to Whom These Presents Shall Come—Greeting:

Whereas, There has been deposited in the General Land Office of the United States an order bearing date March 30, 1896, from the Secretary of the Interior, accompanied by a schedule of allotments of land, dated November 15, 1895, from the Commissioner of Indian Affairs, approved by the Secretary of the Interior March 28, 1896, whereby it appears that under the provisions of the Act of Congress approved March 2, 1895 (28 Stats. 907) Charles Bluejacket an Indian of the Quapaw Tribe, residing on the Quapaw Reservation in the Indian Territory, has been allotted the following described land, viz:

The East Half of the South-West Quarter and the South-West Quarter of the South-West Quarter of Section Thirty-two, in Township Twenty-Nine North, and the Lot numbered One of the North-East Quarter and the Lot numbered Two of the North-East Quarter of Section Five in Township Twenty-Eight North of Range Twenty-Four East of Indian Meridian, in Indian Territory Containing Two-Hundred acres.

Now, Know, Ye, That the United States of America, in considering of the premises, and conformity with the provisions of said Act of Congress, approved March 2, 1895, the Order and Schedule of allotments aforesaid, Has Given and Granted, and by these Presents Does Give and Grant, unto the said Charles Blue Jacket and to his heirs, the said tract above described, but with the stipulation and limitation contained in the aforesaid act, that the land embraced in this Patent shall be inalienable for the period of Twenty-Five Years from and after the date hereof.

To Have and to Hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Charles Blue Jacket and to his heirs, forever;

192 Provided, as aforesaid that said tract shall be inalienable for the said period of Twenty-five-years.



In Testimony Whereof, I, Grover Cleveland, President of the United States of America, have caused these Letters to be made Patent and the Seal of the general land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-sixth day of September in the year of Our Lord One Thousand Eight-Hundred and Ninety-Six, and of the Independence of the United States the One-Hundred and Twenty-First.

By the President:—

GROVER CLEVELAND,  
By M. McKean, Secretary.

(L. S.)

L. Q. C. Lamar, Recorder of the General Land Office.  
Recorded Vol. ... p. ....

Department of the Interior:

General Land Office: Washington, May 10, 1909.  
1909-50936-B.

I hereby certify that the annexed Copy of Patent is a true and literal exemplification from the record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal)

JOHN O'CONNELL,  
Acting Recorder of the General  
Land Office.

Filed for record 9-22-099-9-A. M. fee \$1.75.

Mailed to Paul A. Ewert, City 9-22-09.

C. G. JAMES, Reg. Deeds.  
(Book 9-Page 504)

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193

(Plaintiff's Exhibit 2.)

Address reply to  
"The Attorney General"

and refer to  
Initials and Number.

.....  
.....

Department of Justice.  
Washington.

Miami, Oklahoma,  
January 19th, 1909.

Mr. Wesley M. Smith,  
Baxter Springs, Kanas.

Dear Sir:

I find in going over the abstracts as I continue the work looking to the clearing of the Paupaw titles, that you and other persons have quite a number of leases that, in the opinion of the Government, are not lawful leases, to-wit: agricultural leases that are given for a greater period than ten years, or leases given for the lawful period of three and ten years respectfully which, by their terms are to begin at the expiration of some other lawful lease at some date in the future.

It ought not be necessary for me to take up each allotment and write you a personal letter concerning each of these leases as I find them. I believe that I have now done my full duty to you in writing you in as many instances as I have, asking for a cancellation of what the Government claims are unlawful leases. Will you not now be kind enough to go over your entire list of holdings in the matter of agricultural and mining leases and ascertain what leases you have coming under the above class of unlawful leases, and when  
194 you have ascertained the fact, will you not include all of such leases in a general cancellation, describing each particular tract, that these encumbrances may be removed from all lands in the Quapaw Agency, as far as you are concerned.

I am writing a like letter to all other persons and companies holding that class of leases and I assure you that the Government will play no favorites in these proceedings. It is my purpose to "hew to the line and let the chips fall where they may." I would thank you very much to comply with the above request and have your cancellation sent to the

Register of Deeds at the earliest possible moment, because I would like to have them on record before Friday of this week. In my endeavor to free the records of these many encumbrances before bringing suit and to give all parties due notice of the position of the Government, I have delayed the bringing of suits to quiet titled and remove clouds from these Indian allotments, to a time when I fear that the attorney General is becoming impatient. I hope you will see your way clear to act along the line above suggested at the earliest possible date.

Be kind enough to make a carbon copy of the release that you execute and send the same to me at the time that you send the original to the Register of Deeds. I enclose a form which you may use if you desire. Of course, if you have many leases you will have to use this form but run off your cancellation on the machine.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney  
General.

Enc.  
MWP

195

(Plaintiff's Exhibit 3.)

Address reply to  
"The Attorney General"

And refer to  
Initials and Number.

.....  
.....

Department of Justice  
Washington.

Miami, Oklahoma,  
January 7th, 1909.

Mr. W. T. Apple, Trustee,  
Quapaw, Oklahoma.

Dear Sir:

The records show that under date of June 13th, 1905, Kahdah-ska-hunka and Kah-deeh, his wife, executed to you a certain mining lease of the lands mentioned in the allotment of Mary Grandeagle. In view of the fact that there is upon this land a prior lease, this lease unexplained, appears to me to be null and void.

I am about to begin an action to quiet the title to set aside all unlawful leases to this land and unless some explanation can be offered, I will thank you to execute a release to the above instrument at an early date. Suit will be brought within the next ten days.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney  
General.

MWP

196

(Plaintiff's Exhibit 4.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....

Department of Justice,  
Washington.

Miami, Oklahoma.  
January 7th, 1909.

Mr. Walt Apple,  
Quapaw, Oklahoma.

Dear Sir:

Under date of January 9th, 1907, you took from Kah-dah-ska-hunka and Kah-daah a certain mining lease to the N. E.  $\frac{1}{4}$  and the S. E.  $\frac{1}{4}$  of Section 4, Township 28, Range 23, to begin July 1st, 1915, and to expire July 1st, 1925.

The Department holds that all leases of this kind are void and if you concur in that opinion, be kind enough to execute a release to this instrument at an early date. Suit will be brought to quiet the title and to cancel all illegal leases on this allotment within the next ten days and it is suggested that you take the action above asked for at an early date.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney General.

MWP

197 (Plaintiff's Exhibit 5.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....

Department of Justice,  
  
Washington.

Miami, Oklahoma.  
March 20th, 1909.

Mr. Wesley M. Smith,  
Joplin, Missouri,

Dear Sir:

Permit me to call your attention to a transaction whereby one Walter Apple, with whom you are well acquainted, assigned to you a certain land lease which he had taken from Grace Sacto. The assignment of this land lease was dated January 14th, 1909, and placed of record January 15th, 1909. By this assignment he transferred to you his interest in a certain land lease which he secured from Grace Sacto Cooper dated November 21, 1908, recorded November 23rd, 1908, whereby the said Grace Sacto Cooper leased to him certain lands from March 1st, 1911, to March 1st, 1926.

You undoubtedly know that the law in force in the Quapaw Agency does not permit of the lease of agricultural land for a greater period than three years. Apple knew this and being afraid to stand fire himself has sought to make you the target by assigning this mercilessly unlawful and, I am told, fraudulent case to you.

I wish you would be kind enough to write me by return  
198 mail without fail whether you knew of this assignment by him to you and whether you pretend to own any interest whatever in this lease as it now stands. From my conversation with you I am sure that you do not desire to be brought into court and made a party defendant to a transaction of this nature.

I enclose you a franked envelope which requires no stamp for the favor of your early reply.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney General.

Enc.  
MWP

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199 (Plaintiff's Exhibit 6.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....  
Department of Justice,  
Washington.

Miami, Oklahoma.  
June 19th, 1909.

Mr. Walter T. Apple,  
Baxter Springs, Kansas.

Dear Sir:

I have this day been informed that you have not yet canceled the fifteen year lease which you have on the allotment of Harrison Quapaw and I am writing to know whether you care to attempt to carry this lease or to cancel it.

I have not examined the records but complaints have been made to me that this lease has never been canceled by you.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney General.

MWP

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200 (Plaintiff's Exhibit 7.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....

Department of Justice,  
Washington, D. C.

Joplin, Mo., February 11, 1911.

Mr. Wesley M. Smith,  
Baxter Springs, Kansas.

Dear Sir:

Some time ago I sent a cancellation of an unlawful agricultural lease which you hold on a tract of land in Ottawa County, to J. J. Bulger for your signature.

The lease in question is a twenty year lease, assigned to you by Walter T. Apple or Bulger, and of course, under all the decisions is clearly void. Will you be kind enough to step into Bulger's office and execute the cancellation and send me a draft for \$1.25 for the purpose of placing it of record? Unless this is done it will be necessary, of course, to bring suit to have it cancelled of record.

Yours truly,

(signed) PAUL A. EWERT,  
Special Ass't to the Attorney General.

PAE-H

201 (Plaintiff's Exhibit 8.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....

Department of Justice,  
Washington, D. C.

Joplin, Mo., March 13, 1911.

Mr. Wesley M. Smith,  
Baxter Springs, Kan.

Sir:

I enclose cancellation of a twenty-year agricultural lease taken by Walter Apple upon certain premises now owned by



mw. This lease by the courts and I think, by the judgments of all attorneys, is clearly illegal, and you are requested to execute this cancellation and return it to me, together with \$1.25, the fee for placing the same of record.

I originally sent this through Judge Bulger and he has returned it to me. He executed a cancellation of a lease which he had covering the adjoining lands. Be kind enough to let me hear from you by return mail, and greatly oblige

Yours truly,

(Signed) PAUL A. EWERT.

PAE-H

202 (Plaintiff's Exhibit 9.)

Address reply to  
"The Attorney General"  
And Refer To  
Initials and Number.

.....  
.....

Department of Justice,  
Washington.

Miami, Oklahoma.  
January 15th, 1909.

Mr. Wesley M. Smith,  
Care of Walter Apple,  
Baxter Springs, Kansas.

Dear Sir:

I am in receipt of your letter of January 14th. Will you be kind enough to send me either the original instruments which you have, under date of your letter, sent to the Register of Deeds to be recorded, or send me the copies thereof, showing the instrument, the date of the assignment and the date of recording, and the book and page with the Register of Deeds.

I note your statement about having taken the advice of eminent counsel in the matter of securing a lease to begin July 1st, 1915, and to continue for a period of ten years. In view

of the advice of your counsel, I take it that you wish to stand suit upon this lease.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the Attorney General.

MWP

203

(Plaintiff's Exhibit 10.)

Proceedings in the matter of the Estate of William Bluejacket, et al, Minors, in the County Court of Ottawa County, Oklahoma.)

State of Oklahoma  
Ottawa County

In County Court.

(Petition of Carrie Bluejacket, as guardian of the Estate of William Bluejacket, et al., to sell Real Estate.)

In the Matter of the estate of William, Blanche, Amy and Clyde Bluejacket, minors.

Comes now Carrie Bluejacket as guardian of the estate of William, Blanche, Amy and Clyde Bluejacket, minors, and shows to the Court:

That the amount and value of personal property that has come into her hands as assets of said estate is \$. . . . .;

That said wards are the owners in fee simple, subject to the widow's dower, of the following described real estate, the said William Bluejacket being the owner of the undivided one ninth interest in said estate; that said Blanche Bluejacket being the owner of an undivided one-ninth interest in said estate; the said Amy Bluejacket being the owner of an undivided one-ninth in said estate and the said Clyde Bluejacket being the owner of an undivided one-ninth interest in said estate; situate in the County of Ottawa, State of Oklahoma, described as follows, to-wit:—

The E/2 of the SW/4 and the SW/4 of the SW/4 Sec. 32 T 29 N., and Lots 1 and 2 in the NE/4 of Sec. 5 T 28 N., and the NW/4 of the NE/4 of Sec. 28 T 29 N., all in range 24 East of the Indian Meridian containing 240 acres, more or less;

That said 240 acres was the allotment of one Charles Bluejacket as a member of the Quapaw tribe of Indians of the Quapaw Agency, Ottawa County, Oklahoma, that said Charles

Bluejacket died on the 3rd day of May, 1907, leaving as his sole heirs at law the following named persons, to-wit. Carrie Bluejacket, his widow; Cora Lafalier and Louis Pascal, 204 children of Flora Pascal Lafalier, nee Bluejacket, deceased, a daughter: Rose Bluejacket Daugherty, a daughter; Ida Bluejacket Holden, a daughter, Edward Bluejacket, Walter Bluejacket and William Bluejacket, sons, Blanche and Amy Bluejacket daughters and Clyde Bluejacket, a son;

That under the laws of the United States applicable to the sale of Indian land such lands must be sold under the rules and regulations of the Secretary of the Interior;

That all of the heirs are desirous of disposing of their interests in said real estate;

That the sale of said real estate is necessary for the maintenance and education of said wards;

That there is no indebtedness of said wards;

That there are no liens upon the said real estate to the knowledge of the petitioner;

That written consent to making the order of sale is subscribed by all persons interested therein and the next of kin;

Wherefore your petitioner prays that an order of said Court be made authorizing her to sell the interests of her wards in the whole of the real estate described in this petition by joining with the other heirs in a sale to be made with the approval of the Secretary of the Interior and this Court.

Witness:— (Signed) CARRIE X BLUJACKET  
Ida M. Holden her mark

State of Oklahoma  
Ottawa County

205 Carrie Bluejacket, the petitioner above named being duly sworn says that she has had the foregoing petition read to her and knows the contents thereof and that the same is true to the best of her knowledge and belief.

(Signed) CARRIE X BLUEJACKET.  
her mark

Subscribed and sworn to before me this 1 day of July 1908.

(Seal) (Signed) HORACE B. DURANT  
Notary Public.

206 (Petition of L. A. Lafalier as guardian of the Estate of Cora Lafalier, et al, Minors, to sell Real Estate.)

State of Oklahoma.  
Ottawa County.

In County Court.

In the matter of the estate of Cora Lafalier and Louis Pascal.

Comes Now L. A. Lafalier as guardian of the estate of Cora Lafalier and Louis Pascal, minors, and shows to the Court:

That the amount and value of personal property that has come into.....hands as assets of said estate is \$.....; That said wards are the owners in fee simple, subject to the widow's dower, of the following described real estate, the said Cora Lafalier being the owner of the undivided 1/18 interest in said estate, the said Louis Pascal being the owner of the undivided 1/18 interest in said estate, the said.....being the owner of the undivided..... interest in said estate; and the said.....being the owner of the undivided..... interest in said estate; situate in the County of Ottawa, State of Oklahoma, described as follows, to-wit:—

The E/2 of the SW/4 and the SW/4 of the SW/4 Sec. 32 Twp. 29 N., Range 24 East; and Lots numbered 1 and 2 in the NE/4 of Sec. 5, Twp. 28 N., R 24 E., and the NW/4 of NE/4 of Sec. 28 T 29 N., R 24 E., of Indian Meridian, containing 240 acres, more or less;

That said 240 acres was the allotment to one Charles Bluejacket as a member of the Quapaw tribe of Indians, of the Quapaw Agency, Ottawa County, Oklahoma, that said

207 Charles Bluejacket died on the 3rd day of May, 1907, leaving as his sole heirs at law the following named persons, to-wit:—Carrie Bluejacket, his widow; Cora Lafalier, and Louis Pascal, children of Flora Pascal-Lafalier nee Bluejacket, deceased, a daughter; Rose Bluejacket-Dougherty, daughter; Ida Bluejacket-Holden, daughter; Edward Bluejacket; Walter Bluejacket, William Bluejacket, Blanche Bluejacket, Amy Bluejacket, and Clyde Bluejacket;

That under the laws of the United States applicable to the sale of Indian land such lands must be sold under the rules and Regulations of the Secretary of the Interior.

That all of the heirs are desirous of disposing of their interests in said real estate;

That the sale of said real estate is necessary for the maintenance and education of said wards;

That there is no indebtedness of said wards;

That there are no liens upon said real estate to the knowledge of the petitioner;

That written consent to making the order of sale is subscribed by all persons interested therein and the next of kin;

Wherefore, Your petitioner prays that an order of said Court be made authorizing him to sell the interests of his wards in the whole of the real estate described in this petition by joining with the other heirs in a sale to be made with the approval of the Secretary of the Interior and this Court.

(Signed) L. A. LAFALIER

208 State of Oklahoma,  
Ottawa County

L. A. Lafalier, the petitioner above named, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except the matters therein stated on his information and belief and as to those matters he believes it to be true.

(Signed) L. A. LAFALIER

Subscribed and sworn to before me this 29 day of June, 1908.

(Signed) D. W. TALBOT

County Judge.

(Endorsed) Filed July 17-1908 D. W. Talbot County Judge.

209 (Waiver of Notice of hearing of Petition to sell real estate, etc.)

State of Oklahoma,  
Ottawa County—ss.

In County Court.

In the Matter of the Guardianship of William, Blanche, Amy and Clyde Bluejacket, and Cora Lafalier and Louia Pascal, minors,

We, the undersigned, next of kin and parties interested in the estate of the above named wards hereby waive notice of

hearing petition to sell the following described real estate of said wards, to-wit: E/2 of SW/4 and SW/4 of SW/4 Sec. 32 and NW/4 of NE/4 Sec. 28, all in T 29 and Lots 1 and 2 in Sec. 5, T 28, all in Range 24, E. Indian Meridian, containing 240 a and consent that said order of sale be made as prayed for.

Witness our hands, this 2nd day of July, 1908.

(Signed) IDA M. HOLDEN  
 " WALTER BLUEJACKET  
 " CORA B. DOUGHERTY  
 " ED BLUEJACKET

Witness:

Horace B. Durant (Signed)

(Signed) CARRIE BLUEJACKET <sup>her</sup>  
 X  
 mark  
 for herself and as guardian for  
 minor children

(Signed) IDA M. HOLDEN

(Endorsed) In the Matter of the Guardianship of William Bluejacket, et al., Minors. Order For Hearing Petition To Sell Real Estate By Guardian. Filed July 17 1908, D. W. Talbot, County Judge.

210 (Order of County Court of Ottawa County, Oklahoma, July 17, 1908, for sale of real estate by L. A. Lafalier, guardian of the estate of Cora Lafalier, et al.)

State of Oklahoma,  
 Ottawa County.

In County Court.

In the matter of the estates of Cora Lafalier and Louis Pascal Minors.

L. A. Lafalier as guardian of the estate of Cora Lafalier and Louis Pascal minors, having on the 29th day of June, 1908, presented to this Court and filed herein his verified petition in due form, praying for an order authorizing him to sell the whole or so much and such parts of the real estate described in said petition as the Court shall judge necessary and beneficial.

And it appearing to the Court that written consent to making the order of sale is subscribed by all persons interested therein and the next of kin, and that said interested parties and next of kin waive notice of hearing petition to sell and consent that said order of sale be made; and the matter of said petition coming on regularly to be heard, the Court, upon due examination and consideration of said petition, and after a full hearing upon the same, and due consideration of the proofs and allegations finds, that a sale of real estate belonging to said estate mentioned in said petition and hereinafter particularly described is necessary for the best interest of all concerned;

It is therefore, Ordered, Adjudged And Decreed by the Court, that the said L. A. Lafalier as guardian of the estate of Cora Lafalier and Louis Pascal be and he is hereby authorized and directed to sell in one parcel or in separate parcels or legal subdivisions, as the said guardian shall judge most beneficial to said estate, under such rules and regulations as the Secretary of the Interior may prescribe, as authorized  
 211 by the Act of Congress approved May 27, 1902, governing the sale of inherited Indian lands, the following described real estate, to-wit:

The E/2 of the SW/4 and SW/4 of SW/4 Sec. 32 and NW/4 of NE/4 Sec. 28 all in T 29 and Lots 1 and 2 in Sec. 5 T 28, all in range 24 East of Indian Meridian, Oklahoma, containing 240 acres, more or less.

It is further ordered that before making such sale the said L. A. Lafalier, guardian, execute an additional bond to the State of Oklahoma, in the penal sum of . . . . . dollars, with two or more sufficient sureties, to be approved by the Judge of this Court, conditioned as required by law.

And it is further ordered that said Guardian after making said [said] in accordance with the rules of the Secretary of the Interior, make return of such proceedings and account of sales



verified by [his] affidavit, to this Court, at or before its next term thereafter.

Witness my hand and the seal of said Court this 17 day of July, 1908.

(Signed) D. W. TALBOT

County Judge.

(Seal)

(Endorsed) Filed July 17 1908 D. W. Talbot, County Judge.

Entered on Probate Record Book 1 Pages 112 & 13 on this 30 day of Nov. 1908. J. A. Walker, Clerk Co. Court.

212 (Order of County Court of Ottawa County, Oklahoma, July 17 1908, for sale of real estate by Carrie Bluejacket, guardian of the estate of William Bluejacket, et al.)

State of Oklahoma,  
Ottawa County.

In County Court.

In the matter of the estates of William, Blanche, Amy and Clyde Bluejacket, Minors.

Carrie Bluejacket as guardian of the estate of William, Blanche, Amy and Clyde Bluejacket minors, having on the ... day of .... 1908, presented to this Court and filed herein his verified petition in due form, praying for an order authorizing her to sell the whole or so much and such parts of the real estate described in said petition as the Court shall judge necessary and beneficial.

And it appearing to the Court that written consent to making the order of sale is subscribed by all persons interested therein and the next of kin, and that said interested parties and next of kin waive notice of hearing petition to sell and consent that said order of sale be made; and the matter of said petition coming on regularly to be heard, the Court, upon due examination and consideration of said petition, and after a full hearing upon the same, and due consideration of the proofs and allegations finds, that a sale of real estate belonging to said estate mentioned in said petition and hereinafter particularly described is necessary for the best interest of all concerned;

It is therefore, Ordered, Adjudged And Decreed by the Court, that the said Carrie Bluejacket as guardian of the estate of William, Blanche, Amy and Clyde Bluejacket be and he is hereby authorized and directed to sell in one parcel or in separate parcels or legal subdivisions, as the said guardian shall judge most beneficial to said estate, under such rules and regulations as the Secretary of the Interior may prescribe, as authorized by the Act of Congress approved May 27, 1902, governing the sale of inherited Indian lands, the following described real estate, to-wit:

The E/2 of the SW/4 and SW/4 of SW/4 Sec. 32 and NW/4 of NE/4 Sec. 28 all in T 29 and Lots 1 and 2 in Sec. 5 T 28, all in range 24 East of Indian Meridian, Oklahoma, containing 240 acres, more or less.

It is further ordered that before making such sale the said Carrie Bluejacket, guardian, execute an additional bond to the State of Oklahoma, in the penal sum of ..... dollars, with two or more sufficient sureties, to be approved by the Judge of this Court, conditioned as required by law.

And it is further ordered that said Guardian after making said [said] in accordance with the rules of the Secretary of the Interior, make return of such proceedings and account of sales verified by .... affidavit, to this Court, at or before its next term thereafter.

Witness my hand and the seal of said Court this 17 day of July 1908.

(Seal)

(Signed) D. W. TALBOT

County Judge.

(Endorsed) Filed July 17, 1908 D. W. Talbot, County Judge.

214 (Petition of Carrie Blue jacket, et al., for sale of Inherited Indian Lands.)

(Under Act of Congress approved May 27, 1902)

The Superintendent in charge  
Quapaw Agency, Wyandotte, Oklahoma.

Sir:

We, the undersigned, represent that we are the sole heirs of Charles Bluejacket, deceased, an allottee No. 16, of the Qua-

paw tribe of Indians, Quapaw Agency, Oklahoma, who died on or about the 3rd day of May, 1907, at the age of 69 years, married and with issue, leaving as his sole heirs at law the following named persons:

- Carrie Bluejacket, his widow
- Rose B. Dougherty, a daughter
- Ida B. Holden, a daughter
- Walter Bluejacket, a son
- Edward Bluejacket, a son
- William Bluejacket, a son
- Blanche Bluejacket, a daughter
- Amy Bluejacket, a daughter
- Clyde Bluejacket, a son

and Cora Lafalier and Louis Pascal, children of Flora Pascal-Lafalier, deceased, a daughter of said Charles Bluejacket.

That the deceased has no other children than the ones mentioned.

That as such heirs we request the sale of the following described lands, to-wit:

The E/2 of the SW/4 and the SW/4 of the SW/4 of Section 32, Twp. 29 N., and Lots 1 and 2 of the NE/4 of Sec. 5 Twp. 28 N. and the NW/4 of the NE/4 of Sec. 28 Twp. 29 N., all of Range 24 East of the Indian Meridian, containing 240 acres.

And we hereby agree to be governed by the rules and regulations of the Secretary of the Interior and the amendments thereto governing the sale of such land, and the control  
215 for our use of the proceeds to be deprived from such sale.

We further represent that the allottee did not reside upon his allotment or homestead nor cultivate the land during his lifetime nor immediately preceding his death.

The land herein offered for sale is subject to the following leases:

Mining leases for ten years, and farming leases for three years as shown by the records of the Register of Deeds for Ottawa County, Oklahoma.

(Signed) her  
CARRIE X BLUEJACKET,  
mark

Widow.

(Signed) L. A. LaFALIER,  
legal guardian of Cora Lafalier and  
Louis Pascal, minors.

(Signed) Horace B. Durant  
Ida M. Holden

Witness to signature by mark:

(Signed) Horace B. Durant  
Ida M. Holden

(Signed) her  
CARRIE X BLUEJACKET  
mark  
legal guardian of William, Blanche,  
Amy and Clyde Bluejacket, minors.

(Signed) IDA M. HOLDEN,

(Signed) WALTER BLUEJACKET,

(Signed) CORA B. DOUGHERTY,

(Signed) ED BLUEJACKET,

(Endorsed): Filed July 17, 1908. D. W. Talbot, County Judge.

216 (Report of sale by Carrie Bluejacket, guardian of the  
Estate of William Bluejacket, et al., Minors.)

State of Oklahoma,  
County of Ottawa—ss.

In County Court.

In the Matter of the Estates of William, Blanche, Any and  
Clyde Bluejacket, Minors.

Now comes Carrie Bluejacket, as Guardian of the estates of  
William, Blanche, Any and Clyde Bluejacket, Minors, and  
shows to the Court that:

Whereas, under the date of the 17th day of July, 1908, D.  
W. Talbot, County Judge, made and entered an order in the

above entitled matter wherein it was by the said Court ordered, adjudged and decreed that the said Carrie Bluejacket, as guardian of the estates of William, Blanche, Any and Cylde Bluejacket, be authorized and directed to sell in one parcel or in separate parcels or legal subdivisions, under such rules and regulations as the Secretary of the Interior of the United States may prescribe, as authorized by the Act of Congress approved May 27th, 1902, governing the sale of inherited Indian lands, for the benefit of the said minors, all the right, title and interest of the said minors in and to the following real estate, to-wit:

The East One Half (E- $\frac{1}{2}$ ) of the South-West One-Fourth (S. W.  $\frac{1}{4}$ ) of Section Thirty-two (32); the South-West One-Fourth (S. W.  $\frac{1}{4}$ ) of the South-West One-Fourth (S. W.  $\frac{1}{4}$ ) of Section Thirty-two (32), in Township Twenty-nine (29) Range Twenty-four (24), and Lots numbered One (1) and Two (2) of the North-East One-Fourth (N. E.  $\frac{1}{4}$ ) of Section Five (5), in Township Twenty-eight (28) North of Range Twenty-four (24) East of the Indian Meridian, Oklahoma, containing two hundred acres, more or less,

making returns of the said proceedings and account of sale verified by affidavit to this Court.

Now, Therefore, the said Carrie Bluejacket does, in  
 217 pursuance of the said order of the said Court, report that all the right, title and interest of the said heirs in and to the hereinbefore mentioned lands, pursuant to and in accordance with the law in such cases made and provided, and in accordance with the rules and regulations prescribed by the Secretary of the Interior of the United States, were sold to the highest bidder for cash on the 29th day of March, 1909, to Paul A. Ewert, he being the highest bidder for cash, for the total sum for the whole tract of Five Thousand Dollars (\$5000) of which amount the said William, Blanche, Any and Clyde Bluejacket were, under the laws of descent and distribution in force and governing the distribution of said estate, each entitled to a sum equal to one-ninth ( $\frac{1}{9}$ ) of the said sum of Five Thousand Dollars (\$5,000) to-wit: \$555.55.

Whereas, the said deed made by all of the [heris] of the said Charles Bluejacket, joined in by the said Carrie Bluejacket, as guardian of the said minors, was in due form approved by the Secretary of the Interior of the United States on the 26th day of July, 1909, and a lawful division of the moneys arising out of and by virtue of the said sale having been made by Ira C. Deaver, Superintendent and Special Di-

bursing Agent of the Quapaw Agency, and the distributive share of each of the said minors being in the amount of \$555.55 has come into the hands of the said Ira C. Deaver, as provided by law, and as further provided by law and the rules and regulations promulgated by the Secretary of the Interior, has by him been placed to the credit of each of the said minor heirs in the Cherokee National Bank of Vinita, Oklahoma, subject to the check of myself as the lawful guardian of the said minors when approved by the said Indian Agent in  
218 charge the approval of the said agent only when specifically authorized by the Commissioner of Indian Affairs."

And the said Carrie Bluejacket further reports that no other sum of money had come into her hands by reason of the said sale except as hereinbefore reported.

Witness my hand and seal this 11th day of November, A. D. 1909.

her  
(Signed) CARRIE X BLUEJACKET  
mark

Her thumb mark (Imprint of thumb)  
As Guardian of William Bluejacket,  
Blanche Bluejacket, Any Bluejacket,  
Clyde Bluejacket.

(Seal)

Witness to mark of  
Carrie Bluejacket:

(Signed) B. N. Walker  
Wm. D. Hodgkiss

Subscribed and sworn to before me, a notary public in and for the County of Ottawa and State of Oklahoma, this 11th day of November, A. D. 1909.

(Seal)

(Signed) IRA C. DEAVER,  
Notary Public, Ottawa County, Oklahoma.

My commission expires April 19, 1913.

(Endorsed): No. 358. Wm. Bluejacket, et al.

219 (Certificate of District Judge, Ralph E. Campbell as to the Evidence.)

This is to certify that I, as Judge of the District Court of the United States for the Eastern District of Oklahoma, tried the case of George Redeagle vs. Paul A. Ewert; that the evidence

was taken at Vinita in said District on the 15th day of March, 1917; that after the evidence was taken, and while I had the case under consideration, the plaintiff made application to amend his petition and filed a motion in said cause praying the court to set aside the order of submission in said cause and permit the plaintiff to file an amended petition and introduce evidence in support thereof; that there was presented to the court with said motion the amended petition which plaintiff was offering to file, and at the same time, and in support of the said motion, plaintiff exhibited to the court photographic certified copies of matters referred to in his motion and his offered amended petition with other exemplified copies of like character; that the court considered the same, and I have examined such certified copies and have identified such as I examined by marking them Exhibits, etc., thus: Exhibits 1 R. E. C. to Exhibit p R. E. C. both inclusive.

And I further certify that at the request of the appellant I have examined the transcript of the evidence taken in said cause and certified the same to be true and correct, except two newspaper articles, original exhibits 12 and 13 to be supplied.

Witness my signature this 13th day of November, 1918.

RALPH E. CAMPBELL.

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220 (Remonstrance and opposition of Appellee to the settling of transcript of Record.)

George Redeagle, Plaintiff,  
No. 2293. vs.  
Paul A. Ewert, Defendant.

Comes now the appellee in the above entitled action and opposes the settlement of the record in said case under the notice, for the following reasons, to-wit:

First. That the Appellee has never been served with a copy of the proposed transcript and has never had an opportunity to examine the original of said transcript, and said original transcript of said record is not now nor has the same been filed in the office of the Clerk of the United States District Court in and for the Eastern District of Oklahoma for the examination of said appellee, all as is more fully shown by the affidavits hereunto attached and made a part hereof.

Second. That the said purported transcript, as appellee is informed and believes, has not been prepared in accordance with Equity Rule Number 75, Paragraph "B", the evidence



being set forth in full, and should therefore not be allowed, U. S. vs. Motion Picture Patent Co., 230 Fed., 541; Louisville & N. R. Co. vs. U. S., 238 U. S. 1; 59 L. Ed., 1177, 35 Sup. Ct. Rept. 698; 222 Fed., 885.

Third. That the said purported transcript, according to information given appellee by the letter of appellants' counsel, shows that it is not a true and correct record in accordance with the praecipes filed, in that certain of the exhibits called for in the praecipe of both the appellant and the appellee have been omitted, and that there has been inserted certain photographic copies of certain certified copies of letters that were never adduced in the evidence and never used upon the trial, the nature and contents of which this appellee does not know, because he has never had an opportunity to examine said transcript or the purported photographic copies of said certified copies of letters, all as more fully appears by the affidavits hereunto attached and hereby made a part hereof.

Fourth. That the notice of the presenting of this transcript for settlement to this Court in order to enable the appellee to be present in person or by counsel, is not sufficient to enable appellee to be present and prepared to present his objections to this Court, all as is more fully shown by the affidavits hereunto attached and hereby made a part hereof.

Fifth. That the Honorable F. A. Youmans, Judge of the United States District Court, sitting at Fort Smith, Arkansas, has no jurisdiction, and is without lawful authority to settle the proposed transcript outside of the Eastern District of Oklahoma, to-wit: At Fort Smith, Arkansas.

Sixth. That the appellee does not know and has no means of knowing what is in said proposed transcript because he has never had an opportunity to examine the original, nor is the same on file with the Clerk of the United States District Court for the Eastern District of Oklahoma, nor has a copy thereof been submitted to this appellee for his examination, all as more fully appears by the affidavits hereunto attached and made a part hereof.

Wherefore: Appellee respectfully asks that the said transcript be not settled at this time by said Court.

PAUL A. EWERT, Appellee.

222 (Affidavit of Paul A. Ewert in support of remonstrance and opposition to the settling of the Transcript of Record.)

State of Missouri,  
County of Jasper—ss.

Paul A. Ewert, being first duly sworn, deposes and says that he is the appellee in the above entitled action; that he is his own and sole attorney in said action; that he has had no counsel in said action other than himself, since the month of July, 1918, when notice of the withdrawal and dismissal of the said W. H. Kornegay who appeared in the trial of said case was filed in the office of the Clerk of the United States District Court in and for the Eastern District of Oklahoma.

That on the 11th day of November, 1918, the attorney for said appellant served upon Paul A. Ewert the following notice, to-wit:

“To Paul A. Ewert: In The matter of George Redeagle vs. Paul A. Ewert and Carrie Bluejacket, et al. vs. Paul A. Ewert, now on appeal from the District Court of the United States for the Eastern District of Oklahoma, at Muskogee:

You are hereby notified that on Monday, the 18th day of November, 1918, at the hour of ten o'clock A. M. of said day, at the office of the Clerk of said United States District Court at Muskogee, aforesaid, the appellants in both said causes will submit to the Honorable F. A. Youman, a Judge of the United States District Court, duly assigned to said Eastern District of Oklahoma, the transcript of the evidence and record in said causes of George Redeagle vs. Paul A. Ewert and Carrie Bluejacket, et al., vs. Paul A. Ewert, and ask to have the same settled and approved by said Judge.

And you are hereby requested to be present on said day and at said time and place for the purpose of making such suggestions and demands as you may be advised are proper in respect to the transcript of said evidence and such matters as you desire to have contained in said record.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
Attorneys for Aforesaid Appellants.

Copy of above notice received this 11th day of November, 1918.

.....,  
Attorney for Appellees.”

223 That thereafter, to-wit: On the 13th day of November, 1918, the attorneys for the said appellants appeared at the office of this appellee in the city of Joplin, State of Missouri, by their Law Clerk, Lea Pace, and advised this appellee that the honorable F. A. Youmand would not be in Muskogee, Oklahoma and hold a term of Court on Monday the 18th day of November, 1918, as set forth in the above notice, and would not be there until the 28th day of November, 1918, for which reason appellants would be forced to ask for an extension of time for an enlargement of the time for filing the record on appeal, and in conformity with said representations, the appellee signed the following stipulation:

"In the matter of Appeal from the Decree of the District Court of the United States for the Eastern District of Oklahoma in the case of George Redeagle vs. Paul A. Ewert and the case of Carrie Bluejacket et al. vs. Paul A. Ewert:

By reason of the fact that Judge F. A. Youmans being absent from said District and at Texarkana, Arkansas, making it very inconvenient to reach him, so as to enable the appellants to have settled and approved their respective records on appeal within the time required by law and the order of the Court enlarging the time to file records on appeal, it is hereby agreed by and between the appellants and the said Paul A. Ewert that the time for filing the said records be and the same is hereby extended to and including the 4th day of December, 1918, and authority is hereby given for the entry of an order to such effect.

Dated at Joplin, Missouri, this 13th day of November, 1918.

(Signed) HIRAM W. CURREY  
A. SCOTT THOMPSON,  
Attorneys of Record for the said  
George Redeagle and Carrie Blue-  
jacket and other Appellants.

PAUL A. EWERT,  
Appellee and Defendant."

That at ten o'clock on Saturday morning, November 16, 1918, appellants appeared at the law office of appellee by their law clerk, Lea Pace, and left with appellee a copy of the following notice:

"To Paul A. Ewert:

Take notice that we have just been notified this morning by Judge F. A. Youmans that he would not be able to be in

Muskogee on November 18th, but would take up and dispose of the matter of settling the evidence in the case of George Redeagle vs. Paul A. Ewert and the case of Carrie Bluejacket vs. Paul A. Ewert, at his Chambers in Fort Smith, Arkansas, on Monday, November 18, 1918, and requesting counsel to appear as early in the morning as possible, in order that the matter could be taken up and enable him to leave Fort Smith, Arkansas to go back to Texarkana, Arkansas, on an eleven o'clock train, and the appellants will present their matters referred to in said notice at said time and place.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
Attorneys for Appellants."

That at the time of the serving of said notice the said law clerk, Lea Pace, exhibited to this appellee a certain paper purporting to be the original proposed transcript but did not give this appellee an opportunity to examine the same, saying that she could not leave them in the office, and would not leave them in his office; that appellee requested the privilege of retaining said purported transcript for the purpose of reading it, and was refused said privilege by said clerk for said appellant and their attorneys, who immediately took the same back to the law office of the said H. W. Currey in the city of Joplin, Missouri.

That simultaneously with said conduct, the said clerk, Lea Pace, handed to the appellee in person a letter signed by H. W. Currey, a copy of which said letter is as follows, to-wit:

"November 15, 1918.

Mr. Paul A. Ewert,  
Frisco Building,  
Joplin, Missouri.

Dear Sir:

I just now have a letter from Judge Youmans notifying me that the matter of settling the record in the Redeagle and Bluejacket cases would have to be taken up early next Monday morning at Fort Smith instead of Muskogee, and saying that he had to leave Fort Smith at eleven o'clock to go back to Texarkana.

Now, I have a copy of the record in the two cases, but these are the original copies and I cannot let them go out of my hands. The last sheet in this record contains the certificate of Judge Campbell. If you read that you will see that the

photographic certified copies are identified, and I [purpose] to obtain an order from Judge Youmans directing the clerk to send these to the Court of Appeals. The Clerk takes the view, and I think he is entirely correct, that these certified copies never having been offered in evidence can come before the Court of Appeals in no other way than as they come before the Trial Judge, and by this method they will come before the Court of Appeals in exactly the same way.

Now, the evidence was not reduced, but is produced just as it come from the witnesses and the Clerk has followed the praecipe of the appellants and appellee, in as much as the significance of the testimony is mainly on objections and rulings on objections and largely colloquy between court and counsel, I think the whole evidence should go up. It is probably more to your interest than ours that this be done.

225 I am sending these two copies to your office by Miss Pace and you may examine them if you see fit. You will notice that Campbell has made a certificate of their correctness and he filed the certified copy of the Exhibits with the Clerk, having certified them by bundles. You will note that the newspaper articles offered by the plaintiff are not in the record. The stenographer had completely lost them. I will stipulate with you for copies if you want them in the record,, copies to be obtained from the original files in the newspaper office.

Yours truly,

H. W. CURREY.

HWC-LP

If you find all correct you can O. K. and I will send to the Judge. H. W. C."

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That this appellee advised said clerk that if it were possible for the said appellee to appear he would like to do so as a matter of accomodation to counsel, but that was impossible to do so by reason of the fact that said appellee was a member of the Executive Committee of the United War Work Campaign and was actively engaged as a member of said Committee, with important public business to be attended to during the remainder of the day, Saturday, November 16, 1918, and further that appellee had an important engagement in Kansas City, Missouri, on Monday morning November 18, 1918, the date of the hearing named in said notice, and it would be absolutely impossible for appellee to be present at said hearing on said date.

That appellee does not know what is in the said purported transcript which this Court is asked to settle and determine, and has no means of knowing; that counsel for appellant have not followed the Equity Rules in preparing said transcript, having set forth all of the testimony and all of the exhibits in full as appellee is informed and believes, from appellant's said letter; that from said letter it appears that counsel attempted to incorporate in said record certain photographic certified copies of certain letters, the purport of which appellee does not know, never having seen them, which said letters were never introduced in evidence, were never offered to the Court or presented to the Court after any fashion, except in a certain application to re-open the case, if at all, and are not properly a part of the transcript in said case.

It further appears from the last paragraph of said letter of said appellants as above set forth, that all of the exhibits asked for by appellants and appellee in their praecipes are not included in the said transcript; that counsel for appellant states in his said letter, paragraph three, as follows: "The evidence was not reduced but is produced just as it come from the witnesses and the Clerk has followed the praecipe of the appellants and the appellee." Never having seen the said transcript or a copy thereof, or having been given the privilege of seeing the original on file with the Clerk of said Court, because the same is not on file, appellee does not know whether said fact is true, but it appears from appellant's own letter, supra, that all of said exhibits as asked for by both  
 226 parties have not been incorporated, in that certain newspaper articles are not set forth by copy or otherwise, it being agreed at the trial that said articles might be copied from said files and attached to and be made a part of the transcript.

Affiant further says that appellants had the original transcript of the record in their possession and copies thereof, for at least twenty-four if not forty-eight hours prior to Saturday morning, November, 16, 1918, at ten O'clock A. M., when said notice was served, as he is informed by his Clerk and believes the same to be true, all as more fully appears by her said affidavit hereunto attached.

Wherefore: Appellee asks that the said transcript be not settled at this time by this said Court.

PAUL A. EWERT.

Subscribed and sworn to before me this 16th day of November, 1918.

(Seal)

STELLA DeHONEY,  
Notary Public, Jasper  
County Missouri.

My commission expires March 8, 1919.

227 (Affidavit of Cora Hallam in support of remonstrance and opposition to the settling of transcript of Record.)

State of Missouri,  
County of Jasper—ss.

Cora Hallam, Being first duly sworn, deposes on her oath and says that she is now and has been for a long time past the law clerk of the said appellee, Paul A. Ewert; that on Friday morning, November 15, 1918, Lea Pace, the law clerk of the said H. W. Currey one of the attorneys for said appellant appeared at the law office of said appellee and inquired for him, saying that she had some papers she wished to serve upon him; affiant states that she informed said Lea Pace that the said Paul A. Ewert was a member of the Executive Committee of the War Work Campaign and was on the streets engaged in the work of the Committee.

That later, the said Lea Pace again appeared at the office of appellee, the appellee in the meantime having come to his office and having been informed by this affiant of the visit of said clerk Lea Pace, upon the mission stated; that said Paul A. Ewert, appellee, told this affiant to advise the said H. W. Currey and his clerk, that if they had any papers to serve and would leave them, that appellee would examine them and take proper action in the premises if he should come into the office later in the day; that said Lea Pace appeared at said office a number of times during the day but refused to leave any papers and refused to advise affiant of the nature or contents of said papers.

That about ten o'clock in the morning of Saturday, November 16, 1918, the said Ewert came into his office from his work and that this affiant immediately called up by telephone the office of the said H. W. Currey and advised them that the said Ewert was in his office and would remain there for a short time and that if they had any papers to serve upon him to bring them over at once, that he was busily engaged in war



work; that thereupon, the said Lea Pace appeared at the office of appellee and handed to the said Paul A. Ewert a certain letter on said date, but which letter in fact bore the date of November 15, 1918, set forth in the affidavit of the said Paul A. Ewert; that the said Lea Pace submitted to the said Paul A. Ewert a paper which she said was the original record in the case of Redeagle vs. Ewert, but stated that Mr. Currey, the attorney for the appellants had instructed her not to leave said papers and she would not leave them; that

228 Mr. Ewert requested that they be left with him for examination, but the said Lea Pace stated she was instructed not to leave them and could not leave them, and without giving the said Ewert the opportunity of examining the said record, she took the same with her and left the office, not serving upon the said Paul A. Ewert a copy of the record, or leaving any papers, except the notice to appear and the said letter signed by the said H. W. Currey, as set forth in the affidavit of the said Paul A. Ewert. Further affiant sayeth not.

CORA HALLAM.

Subscribed and sworn to before me this 16th day of November, 1918.

My commission expires March 8, 1919.

(Seal)

STELLA DeHONEY  
Notary Public, Jasper  
County, Missouri.

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229 (Approval of the Statement of Evidence by District Judge.)

Now on this 18th day of November, 1918, comes George Redeagle by his attorney, A. Scott Thompson, and presents to be at Chambers at Fort Smith, Arkansas, what purports to be a transcript of the evidence taken at the trial in the above entitled cause, and it appearing from the certificate of the Honorable Ralph E. Campbell, former United States District Judge for the Eastern District of Oklahoma, who tried said cause, that said transcript of the evidence is "true and correct except two newspaper articles, original exhibits twelve and thirteen to be supplied" and relying solely on said certificate of said Honorable Ralph E. Campbell, I find said transcript of the evidence "to be true and correct except two newspaper articles, original exhibits twelve and thirteen to be supplied".

The remonstrance of the appellee is hereby attached to and made a part of this bill of exceptions. This record and transcript of the evidence in said cause and the said remonstrance of appellee are therefore, hereby approved by me and the Clerk of the District Court of the United States for the Eastern District of Oklahoma is ordered to file the same as bill of exceptions in said cause. And upon request of appellant it is ordered that the evidence set out in the bill of exceptions be certified and transferred to the Circuit Court of Appeals without being reduced to narrative form.

Given under my hand at Forth Smith, Arkansas, this 18th day of November, 1918.

FRANK A. YOUMANS,  
Judge.

(Clerk's Note: The Exhibits twelve and thirteen mentioned above "to be supplied" have never been supplied by either party to this suit)

230 Endorsed: Filed in the District Court on November 19, 1918.

231 (Petition for and Order Allowing Appeal.)

To the Honorable Ralph E. Campbell, District Judge:

The above named plaintiff, feeling himself [aggrieved] by the decree made and entered in this cause on the 4th day of March, A. D. 1918, does hereby appeal from said decree to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and he prays that his appeal be allowed and that citation issued as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

HIRAM W. CURREY  
Attorney for Appellant.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of \$250.00.

RALPH E. CAMPBELL  
Judge of the District Court of  
the United States for the East-  
ern District of Oklahoma.

Endorsed: Filed in the District Court on August 21, 1918.

232

### Assignment of Errors.

Now Comes the appellant, George Redeagle, by his Attorney, Hiram W. Currey, and in connection with his petition for appeal herein says that in the record and proceedings and in the final decree herein, manifest error has intervened to the prejudice of the appellant to-wit:

1. The Court erred in over-ruling the appellants' petition and motion to set aside the order of submission of the case on the evidence (filed on the 4th day of June, 1917,) and for leave to amend their said petition and complaint as presented to the Court with their said motion.

2. The Court erred in refusing to consider as evidence in the case the exemplification presented to the Court with the motion for leave to amend, and erred in refusing to consider the petition or bill of complaint presented to the Court with the motion to set aside the order of submission, and for leave to amend as an amended complaint in the case.

3. The Court erred in refusing the request of the complainant made at the beginning of the trial that under Section 2126, Revised Statutes of the United States, the burden of proof was on the defendant, a white man, the plaintiff being an Indian, the said cause being won within the perview  
233 of the provisions of said sections 2126, which places the burden of proof on the white man in all suits where in an Indian is a plaintiff, and a white man the defendant, and effecting the property rights of the complainant Indian.

4. The Court erred in over-ruling the plaintiff's objection to the following question; asked defendant Ewert:

Q. "I wish you would state whether or not before the deed was approved by the Secretary of the Interior, it was known to that official, that you P. A. Ewert, occupied such position that you did with reference to the Department of Justice had become the purchaser?"

Mr. Currey: Object to that as incompetent, irrelevant and immaterial.

The Court: He may answer that.

Answer: Yes.

The Court: Objection over-ruled and exceptions noted.

5. The Court erred in ruling that the relation of defendant to the Government of the United States, and the Quapaw Indians arising out of the fact that defendant was a special assistant Attorney General of the United States, and engaged in bringing and prosecuting suit in the name of the United States to recover for infractions of the rights, of the Quapaw Indians relating to their unrestricted lands, did not bring the defendant into such judiciary relation to said Indians as prohibited him from purchasing their land and obligated him to inform the Secretary of the Interior, or Commissioner of Indian Affairs of all facts to his knowledge which might affect the value of Indian land about to be sold under the supervision of the Secretary of the Interior, or Commissioner of Indian Affairs.

234 6. The Court erred in rendering a decree for the defendant, dismissing the plaintiff's bill of complaint since on the admissions in the defendant's answer the Court should have entered a decree for the complainant as [prays] in his bill.

7. The Court erred in entering a decree for the defendant dismissing the plaintiffs bill of complaint, since upon the pleading and the evidence in the case, the decree should have been for the complainant against the defendant.

8. The Court erred in holding and ruling that the provisions of Section 2078 of the Revised Statutes of the United States, did not absolutely prohibit the defendant an Assistant Attorney General of the United States from having any concern or interest in any trade, or dealing with an Indian and in ruling that the defendant, although a Special Assistant Attorney General of the United States had the right to purchase the land in controversy from the complainant and erred in holding and ruling that the Secretary of the Interior and the Attorney General of the United States, could give lawful permission to the defendant to purchase land of the complainant when the sale of such land was made thru the office and under the direction of the Secretary of the Interior.

9. The Court erred in holding ruling that the evidence introduced at the trial did not establish a fiduciary obligation of the defendant to the plaintiff Indian, and require the defendant to show by evidence clear and cogent that his purchase was for a fair price and in all respects equitable and just.

10. The Court erred in refusing to hold and rule that the fact that the defendant had secured the purchase in this case to be made by Franklin Smith, without the knowledge  
235 of the plaintiff and for the use and benefit of the defendant constitutes proof of actual fraud, and justifies a decree for the plaintiff.

Wherefore the defendant prays that said decree be reversed and the District Court directed to enter a decree for the plaintiff as prayed in his bill of complaint, and that the decree herein in all things reversed and a proper decree for complainant herein entered.

A. SCOTT THOMPSON  
and HIRAM W. CURREY  
Attorneys for the Appellant.

Endorsed: Filed in the District Court on August 21, 1918.

236

### Bond on Appeal.

Know All Men By These Presents: That we, George Redeagle, as principal, and George L. Coleman as surety, acknowledge ourselves to be jointly indebted to Paul A. Ewert, appellee, in the above cause, in the sum of Two Hundred and Fifty Dollars (\$250.00); Conditioned that, Whereas, on the 4th day of March, A. D. 1918, in the District Court of the United States for the Eastern District of Oklahoma, in a suit depending in that court, wherein George Redeagle was plaintiff and Paul A. Ewert was defendant, numbered on the Equity Docket as 2293, a decree was rendered against the said George Redeagle and the said George Redeagle having obtained and appeal to the Circuit Court of Appeals for the Eighth Circuit and filed a copy thereof in the office of the Clerk of the Court reversed the said decree, and a citation directed to the said Paul A. Ewert citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Eighth Circuit to be holden in the City of St. Louis in the State of Missouri on the .... day of December, A. D. 1918 next.

Now, if the said George Redeagle shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

George L. Coleman  
Surety.

GEORGE REDEAGLE  
Principal

Approved this 21st day of August, 1918.

RALPH E. CAMPBELL.  
Judge.

Endorsed: Filed in the District Court on August 21, 1918.

237 (Complainant's praecipe for transcript and affidavit of Service.)

The Clerk will please copy as the record on appeal in this case, the following papers and record:

1. The petition or bill of complaint filed by plaintiff;
2. The answer filed by the defendant.
3. Copy of Order submitting the case made March 15, 1917;
4. Copy of order of June 4, 1917, filing motion to set aside order of submission and for leave to file amended answer.
5. Copy of motion to set aside order of submission and leave to answer, filed June 4, 1917, and copy of amended answer submitted to the Court therewith.
6. Copy of defendant's amended answer to motion to set aside submission of case and leave to answer, and copy of record entry of filing same, dated June 4, 1917.
7. Copy of defendant's amended answer in opposition to application for leave to file amended petition, and record entry of filing same, dated July 20, 1917.
8. Copy of order submitting motion to re-open case dated July 23, 1917.
- 238 9. Copy of order over-ruling plaintiff's motion to re-open case and file amended answer.
10. Copy of final decree in the case with exceptions thereto.

11. Copy of transcript of the evidence taken in case No. 2293, Carrie Bluejacket, et al, versus Paul A. Ewert, being the evidence in both 2293 and 2299, and in copying the evidence or manuscript of the stenographer the clerk will please make a complete copy, including the statements and remarks of the Court and of Counsel for the respective parties together with the rulings of the court in every particular.

12. Copy of order allowing appeal, the petition for appeal and the assignment of errors filed therewith.

13. Copy of bond for appeal and approval thereof.

A. SCOTT THOMPSON  
HIRAM W. CURREY

Attorneys for Appellants.

239 State of Missouri,  
County of Jasper—ss.

Lea Pace, being duly sworn, upon her oath, states that on the 26th day of August, 1918, she delivered a true copy of the within Order for Record on Appeal to the clerk and stenographer of the appellee, Paul A. Ewert, at the office of said Paul A. Ewert, in the City of Joplin, Jasper County, Missouri; that the said Paul A. Ewert was absent from his office and she learned from his said clerk that he had been absent for some weeks, but was expected to be back at his office on August 27, 1918.

LEA PACE

Subscribed and sworn to before me this 26th day of August, 1918.

VIRGINIA A. DAVIS,

(Seal)

Notary Public.

My Commission expires March 7, 1922.

Endorsed: Filed in the District Court on August 27, 1918.

240 (Petition to cancel and set aside stipulation for dismissal.)

Comes now the plaintiff in the above entitled cause and represents and shows to this Honorable Court that heretofore, to-wit: on the 20th day of July, 1918, there was filed in the above entitled case with the Clerk of this Court, but without leave of this Court, a paper writing of the tenor following, viz:



"It is hereby stipulated and agreed between the Plaintiff in the above entitled action, George Redeagle, and the plaintiff therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed with prejudice this 5th day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the said lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit, George Redeagle vs. Paul A. Ewert, defendant."

Your petitioner avers that since the filing of said instrument of writing by the said Paul A. Ewert the plaintiff, by his attorneys, A. Scott Thompson and Hiram W. Currey, has duly made his appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the decree entered in the above entitled cause on the 4th day of March, 1918, dismissing the plaintiff's bill and adjudging that plaintiff take nothing by his suit.

241 Plaintiff shows to this Court that he is a full blood Quapaw Indian of the Quapaw Indian Tribe, and that the lands involved in the aforesaid suit are Quapaw Indian allotted restricted lands, the alienation thereof being restricted for twenty-five years, which has not elapsed, that the suit aforesaid was and is a suit to set aside a deed to the said lands made to the defendant, Paul A. Ewert.

Plaintiff further states that his attorneys in the aforesaid cause were, and are, A. Scott Thompson of Miami, Oklahoma, and Hiram W. Currey of Joplin, Missouri; that about the time the decree was entered in this cause and a short time thereafter the said A. Scott Thompson left the city of Miami and went to the City of Washington, D. C. on business, and has been engaged in the said Washington, D. C. ever since said time, so plaintiff has had no opportunity of consulting with his said attorney; that plaintiff was not acquainted with his said attorney, Hiram W. Currey; did not know where his office was, never having seen the said Currey but once prior to the time of the trial of said cause; that the said Paul A. Ewert, by letters and oral representations prevented this plaintiff from consulting with his said attorneys before signing the writing herein set out, and by false statements and false representa-

tions orally and in writing, induced the plaintiff to believe that his said attorneys had abandoned his said cause and did not [intent] to appeal the same to the Circuit Court of Appeals, and represented to the plaintiff that the said cause was not begun by this plaintiff's said attorneys in good faith, but fraudulently and for the sole and only purpose of clouding the plaintiff's title, and represented to this plaintiff that his said at-

242 torneys well knew that there was no merit in said cause, but by false representations and false statements and by preventing the plaintiff from consulting with his said lawyers, induced the plaintiff to believe that his said cause was entirely without merit, and for that reason it was best for this plaintiff to make an agreement with the said Paul A. Ewert to dismiss said cause; and, further represented to this plaintiff, on the 1st day of July, 1918, that the time for appeal had expired, or that it would expire a very short time thereafter, which statement was [was] and untrue; that in fact plaintiff's said attorneys had, at the time of said statement, two whole months within which to make plaintiff's said appeal, and intended to make said appeal, and had not abandoned plaintiff's said cause; that the plaintiff was, by the said defendant, misled, deceived and fraudulently induced to execute the writing aforesaid.

Wherefore, and the premises considered, plaintiff prays that a decree be entered herein cancelling, setting aside and holding for naught said instrument of writing, as a contract between the plaintiff and said defendant; that said paper writing be, by order of this Court, stricken from the record and in all things annulled.

A. SCOTT THOMPSON  
HIRAM W. CURREY

Attorneys for Plaintiff.

Endorsed: Filed in the District Court on September 2, 1918.

243 (Notice of Application for leave to amend Answer by Interlineation.)

To George Redeagle, Plaintiff Above Named, and to His Attorneys, H. W. Currey and A. Scott Thompson:

Please take notice that the defendant in the above entitled cause will at the opening of Court on Monday, March 12, 1917, at Nine o'clock A. M. of said date, or as soon thereafter as the same may be heard by said Court, in the City of Vinita in the Eastern District of the State of Oklahoma, move the

Honorable Ralph E. Campbell, Judge of said Court, for leave to amend his Answer in said above entitled action, after the manner and way set forth in the Application for leave to amend by interlineation which is hereunto attached and made a part hereof.

Dated at Joplin, Missouri, this 3<sup>rd</sup> day of March, 1917.

(Signed) PAUL A. EWERT,  
Defendant and Defendant's  
Attorney, 405-406 Frisco Bldg.,  
Joplin, Missouri.

244 (Application for leave to amend Answer by Interlineation.)

Comes now the defendant in the above entitled action, and asks leave of the Court to amend his said Answer therein by interlineation, by adding at the close of Paragraph IX. and before the prayer for judgment, the following, to-wit:

"X.

"As a further and separate defense herein, the defendant pleads and relies upon the statute of limitations of actions of the State of Oklahoma in bar of plaintiff's right to maintain the suit and recover, under said section 4657 of the Revised Laws of the State of Oklahoma of 1910, and shows to the Court that the plaintiff herein has had both actual and constructive notice of all the facts relied upon by him in the Petition relative to the purchase of the said land by the said defendant, Paul A. Ewert, for more than five years previous to the commencement of this action, and for more than two years previous to the commencement of this action, and defendant shows to the Court that said plaintiff during all of the said five years has had actual knowledge of the fact that the said defendant did purchase the lands mentioned, in his own  
245 name, and that said plaintiff during said periods of five years and of three years and of two years previous to the commencement of said action was under no legal disability; and defendant prays that this said suit upon said grounds

be dismissed as against this defendant, and that he be allowed to go hence and recover his costs herein."

(Signed) PAUL A. EWERT  
 Defendant, and Defendant's  
 Attorney, 405-406 Frisco Bldg.,  
 Joplin, Missouri.

Service acknowledged, of above notice and amendment this March 4, 1917.

A. SCOTT THOMPSON and  
 HIRAM W. CURREY,  
 Attorneys for the plaintiff.

Endorsed: Filed in the District Court on March 12, 1917.

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246 (Order March 12, 1917, granting leave to amend Answer.)

Now on this 12th day of March, 1917, it is ordered that the defendant have and he is hereby given leave to amend his answer herein.

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247 And, to-wit, on the 20th day of July, A. D. 1917, there was entered by the Clerk of this court on the Appearance docket of this court the following entry:

"July 20, 1917, Fil & Ent. Amend Answer of Deft. in opposition to Application for leave to file Amend Pet."

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248 (Stipulation for dismissal of cause with prejudice.)

It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5th day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott

Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

GEORGE REDEAGLE,  
Plaintiff.

PAUL A. EWERT,  
Defendant.

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We, the undersigned, do hereby certify that we were present when the above stipulation for dismissal was read over and signed by the said George Redeagle; that at the time of the signing there of it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that the said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequences of his said actions.

J. C. AMMERMAN,  
F. E. ENGART.

Endorsed: Filed in the District Court on July 17, 1918.

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249 And, to-wit, on the 17th day of July, A. D. 1918, there was entered by the Clerk of this Court on the Appearance docket of this court the following entry:

"July 17, 1918, Fil & Ent. Stipulation for Dismissal."

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250 (Praecept of defendant for additional transcript.)

Comes now the defendant and shows to the court that on the 26th day of August, 1918, plaintiff in the above entitled action served upon the defendant a copy of that certain paper filed with this court under date of August 21, 1918, entitled "Order for Record on Appeal". And the defendant shows to the court that the said order for record on appeal is inequitable and unjust in that if it is allowed to stand it does not and will not properly present to the Circuit Court of Appeals of the United States the issues in said cause.

Now, therefore, the Clerk will please incorporate into the record of appeal, as a part of the record, the following further and additional papers now on file in this court and of record in this court.

1. Petition for leave to amend defendant's answer by interlineation.
- 251 2. Court's order to amend.
3. Defendant's answer as amended by interlineation with filing marks thereon.
4. Entry in appearance docket of this court as made under date of July 20, 1917 showing the filing and entry of defendant's amended answer to the application of plaintiff to set aside the order of submission and re-open cause.
5. Amended answer of defendant to application to re-open case filed July 20, 1917, together with filing marks thereon.
6. All exhibits offered and received in evidence during the course of the trial of said cause.
7. Copy of all the testimony adduced at the trial of Blue-jacket et al vs. Ewert, Equity No. 2299 and Redeagle vs. Ewert, Equity No. 2293, together with the minutes of the court showing the consolidation for trial of both of said cases.

And defendant further shows to this court and is prepared to support said statements by affidavits of proper persons that under date of July 5, 1918, the plaintiff, George Redeagle, during the absence of the defendant from his law office in the city of Joplin, Missouri on his vacation, came to the office of the said defendant and then and there for the consideration of a substantial consideration paid by defendant's clerk, made, executed and delivered to the defendant his certain stipulation for dismissal in the above entitled case in the following words and figures, to-wit:

252 "In the District Court of The United States in and for the Eastern District of Oklahoma.

George Redeagle, Plaintiff,  
Number 2293-E. vs.  
Paul A. Ewert, Defendant.  
Stipulation for Dismissal.

It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant [thereif], Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5<sup>th</sup> day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited

and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

(Signed) GEORGE REDEAGLE  
Plaintiff.

PAUL A. EWERT,  
Defendant.

We, the undersigned, do hereby certify that we were present when the above stipulation for Dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that the said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequences of his said actions.

(Signed) J. C. AMMERMAN  
F. E. ENGART."

253 That thereafter, to-wit on the 17th day of July, 1918, the defendant caused the said stipulation to be filed for record in the office of R. P. Harrison, Clerk of the United States District Court in and for the Eastern District of Oklahoma, all as more fully appears upon the face of said original stipulation now in file and of record in this court and that on said 17th day of July, 1918, the Clerk of this court made a certain record on his appearance docket as of said date showing the filing and entering of said stipulation for dismissal.

That under date of August 21, 1918, one, H. W. Currey, one of the attorneys for the plaintiff, came to the office of the clerk of the United States District Court in and for the Eastern District of Oklahoma, located at Muskogee with a view of preparing appeal papers in said case. That while he was in said office at said time and before said appeal papers were filed and the appeal allowed, the clerk of this court directed the attention of the said H. W. Currey to the filing of said stipulation for dismissal and the docket entry thereof and showed him said stipulation. That notwithstanding said stipulation for dismissal, the said H. W. Currey then falsely and fraudulently and with the intent and purpose of deceiving



the Honorable Ralph E. Campbell, Judge of said court, and keeping from him the fact that said stipulation had been made and filed, appeared before the said court, filed his application for appeal without advising the said court of said stipulation for dismissal and the court did [now] know of such stipulation for dismissal and allowed the said appeal. That it was not until some time after its allowance that the matter  
 254 of the stipulation was directed to his attention by the clerk of said court.

Wherefore the clerk will please copy into the record on appeal in said cause, the additional portions of said record by incorporating therein the following:

8. Stipulation for dismissal of the above entitled cause and the filing marks thereon as of July 17, 1918.

9. Copy of entry on appearance docket of this court under date of July 17, 1918, showing the filing and entry of said stipulation for dismissal.

10. Defendant's application for praecipe for additional portions of the record to be incorporated in the record, together with the proceedings had thereon in this court.

PAUL A. EWERT,  
 Deft. and Atty. for Deft.

Endorsed: Filed in the District Court on August 30, 1918.

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255 (Proof of Service of notice of praecipe for additional transcript.)

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(Affidavit of Cora Hallam.)

State of Missouri,  
 County of Jasper—ss.

Cora Hallam, first being duly sworn, deposes on her oath and says that she is the Law Clerk of the defendant, Paul A. Ewert; that on the 31st day of August, 1918, she served the attached notice and praecipe upon the plaintiff herein, George Redeagle, by handing to and leaving with Leah Pace, the stenographer and law clerk of H. W. Currey, one of the attorneys for the plaintiff, a true and correct copy of said notice and praecipe, at his office and place of business in the city of Joplin in the State of Missouri; that the said praecipe is a true and correct copy of the original thereof filed in the office of R. P. Harrison, Clerk of the United States District

Court for the Eastern District of Oklahoma, at Muskogee, in said State of Oklahoma, on the 30th day of August, 1918.

Further affiant sayeth not.

CORA HALLAM

Subscribed and sworn to before me this 31st day of August, 1918.

(Seal)

PAUL A. EWERT  
Notary Public, Jasper  
County, Missouri.

My commission expires April 18, 1922.

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256 (Notice of the filing of praecipe for additional transcript.)

To George Redeagle, Plaintiff, and to H. W. Currey and A. Scott Thompson, his Attorneys for Record:

You are hereby notified that on the 30th day of August, 1918, the defendant in the above entitled action filed with R. P. Harrison, Clerk of the United States District Court in and for the Eastern District of Oklahoma, his certain praecipe for additional portions of the record to be incorporated into the record on appeal in said case, a copy of which said praecipe so filed is hereunto attached and made a part hereof.

Please govern yourselves accordingly.

Dated this 31st day of August, 1918.

PAUL A. EWERT  
Attorney for Defendant.

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Due and personal service of the above and attached notice and copy of praecipe is hereby admitted this 31st day of August, 1918.

.....  
.....  
Attorneys for Plaintiff.

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257 (Praecipe of defendant for additional transcript.)

Comes now the defendant and shows to the court that on the 26th day of August, 1918, plaintiff in the above entitled action served upon the defendant a copy of that certain paper filed with this court under date of August 21, 1918, en-

titled "Order for Record on Appeal." And the defendant shows to the court that the said order for record on appeal is inequitable and unjust in that if it is allowed to stand it does not and will not properly present to the Circuit Court of Appeals of the United States the issues in said cause.

Now, therefore, the Clerk will please incorporate into the record of appeal as a part of the record, the following further and additional papers now on file in this court and of record in this court.

1. Petition for leave to amend defendant's answer by interlineation.
- 258 2. Court's order to amend.
3. Defendant's answer as amended by interlineation with filing marks thereon.
4. Entry in appearance docket of this court as made under date of July 20, 1917 showing the filing and entry of defendant's amended answer to the application of plaintiff to set aside the order of submission and re-open cause.
5. Amended answer of defendant to application to re-open case filed July 20, 1917, together with filing marks thereon.
6. All exhibits offered and received in evidence during the course of the trial of said cause.
7. Copy of all the testimony adduced at the trial of Blue-jacket et al vs. Ewert, Equity No. 2299 and Redeagle vs. Ewert, Equity No. 2293, together with the minutes of the court showing the consolidation for trial of both of said cases.

And defendant further shows to this court and is preared to support said statements by affidavits of proper persons that under date of July 5, 1918, the plaintiff, George Redeagle, during the absence of the defendant from his law office in the city of Joplin, Missouri on his vacation, came to the office of the said defendant and then and there for the consideration of a substantial consideration paid by defendant's clerk, made, executed and delivered to the defendant his certain stipulation for dismissal in the above entitled case in the following words and figures, to-wit:

259 "In the District Court of the United States in and for the Eastern District of Oklahoma.

George Redeagle, Plaintiff,  
Number 2293-E vs.  
Paul A. Ewert, Defendant.

### Stipulation for Dismissal.

It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5<sup>th</sup> day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

(Signed) GEORGE REDEAGLE  
Plaintiff.

PAUL A. EWERT,  
Defendant.

We, the undersigned, do hereby certify that we were present when the above stipulation for Dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that the said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequence of his said actions.

(Signed) J. C. AMMERMAN  
F. E. ENGART."

That thereafter, to-wit on the 17th day of July, 1918, the defendant caused the said stipulation to be filed for record in the office of R. P. Harrison, Clerk of the United States District Court in and for the Eastern District of Oklahoma, all as more fully appears upon the face of said original stipulation now on file and of record in this court and that  
260 on said 17th day of July, 1918, the Clerk of this court made a certain record on his appearance docket as of said date showing the filing and entering of said stipulation for dismissal.

That under date of August 21, 1918, one, H. W. Currey, one of the attorneys for the plaintiff, came to the office of the clerk of the United State District Court in and for the Eastern District of Oklahoma, located at Muskogee, with a view of preparing appeal papers in said case. That while he was in said office at said time and before said appeal papers were filed and the appeal allowed, the clerk of this court directed the attention of the said H. W. Currey to the filing of said stipulation for dismissal and the docket entry thereof and showed him said stipulation. That notwithstanding said stipulation for dismissal, the said H. W. Currey then falsely and fraudulently and with the intent and purpose of deceiving the Honorable Ralph E. Campbell, Judge of said court, and keeping from him the fact that said stipulation had been made and filed, appeared before the said court, filed his application for appeal without advising the said court of said stipulation for dismissal and that the court did now know of such stipulation for dismissal and allowed the said appeal. That it was not until some time after its allowance that the matter of the stipulation was directed to his attention by the clerk of said court.

Wherefore the clerk will please copy into the record on appeal in said cause, the additional portions of said record by incorporating therein the following:

8. Stipulation for dismissal of the above entitled cause and the filing marks thereon as of July 17, 1918.
- 261 9. Copy of entry on appearance docket of this court under date of July 17, 1918, showing the filing and entry of said stipulation for dismissal.

10. Defendant's application for praecipe for additional portions of the record to be incorporated in the record, together with the proceedings had thereon in this court.

PAUL A. EWERT  
Defendant.

Endorsed: Filed in the District Court on September 2, 1918.

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- 262 (Plaintiff's objections to defendant's praecipe for additional transcript.)

The plaintiff in the above entitled cause objects to there being copied by the Clerk and put into this record on appeal, the following matters set forth in the appellee's praecipe for record filed on the 30th day of August, 1918, viz.:

"And defendant further shows to this court and is prepared to support said statements by affidavits of proper persons that under date of July 5, 1918, the plaintiff, George Redeagle, during the absence of the defendant from his law office in the city of Joplin, Missouri on his vacation, came to the office of the said defendant and then and there for the consideration of a substantial consideration paid by defendant's clerk, made, executed and delivered to the defendant his certain stipulation for dismissal in the above entitled case in the following words and figures, to-wit:

"In the District Court of The United States in and for the Eastern District of Oklahoma.

George Redeagle, Plaintiff,  
Number 2293-E. vs.  
Paul A. Ewert, Defendant.

Stipulation for Dismissal.

It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5" day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

(Signed GEORGE REDEAGLE,  
Plaintiff.

PAUL A. EWERT,  
Defendant.

We, the undersigned, do hereby certify that we were present when the above stipulation for Dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have

full knowledge of what he was doing and the consequences of his said actions.

(Signed J. C. AMMERMAN  
F. E. ENGART.)

That thereafter, to-wit on the 17th day of July, 1918, the defendant caused the said stipulation to be filed for record in the office of R. P. Harrison, Clerk of the United States District Court in and for the Eastern District of Oklahoma, as more fully appears upon the face of said original stipulation now on file and of record in this court and that on said 17th day of July, 1918, the Clerk of this court made a certain record on his appearance docket as of said date showing the filing and entering of said stipulation for dismissal.

That under date of August 21, 1918, one, H. W. Currey, one of the attorneys for the plaintiff, came to the office of the clerk of the United States District Court in and for the Eastern District of Oklahoma located at Muskogee, [view] a view of preparing appeal papers in said case. That while he was in said office at said time and before said appeal papers were filed and the appeal allowed, the clerk of this court directed the attention of the said H. W. Currey to the filing of said stipulation for dismissal and the docket entry thereof and showed him said stipulation. That notwithstanding said stipulation for dismissal, the said H. W. Currey then falsely and fraudulently and with the intent and purpose of deceiving the Honorable Ralph E. Campbell, Judge of said court, and keeping from him the fact that said stipulation had been made and filed, appeared before the said court, filed his application for appeal without advising the said court of said stipulation for dismissal and that the court did now know of such stipulation for dismissal and allowed the said appeal. That it was not until some time after its allowance that the matter of the stipulation was directed to his attention by the clerk of said court.

264 Wherefore the clerk will please copy into the record on appeal in said cause, the additional portions of said record by incorporating therein the following:

8. Stipulation for dismissal of the above entitled cause and the filing marks thereon as of July 17, 1918.
9. Copy of entry on appearance docket of this court under date of July 17, 1918, showing the filing and entry of said stipulation for dismissal."



Plaintiff also objects to the defendant's order November 1, calling for petition for leave to amend defendant's answer by interlineation.

Plaintiff objects to order number 2 calling for Court's order to amend.

Plaintiff also objects to order number 3 calling for defendant's answer as amended by interlineation with filing marks thereon.

Plaintiff objects to order number 7 calling for copy of all the testimony adduced at the trial of Bluejacket et al vs. Ewert, Equity No. 2299 and Redeagle vs. Ewert, Equity No. 2293, together with the minutes of the court showing the consolidation for trial of both of said cases, the same having been called for in praecipe of the appellant.

A. SCOTT THOMPSON  
HIRAM W. CURREY  
Attorneys for Plaintiff.

Endorsed: Filed in the District Court on September 4, 1918.

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265 (Order for the transmission to the Appellate Court of certain original exhibits.)

At the request of the appellant, George Redeagle, by his counsel, A. Scott Thompson, it is hereby ordered that original exhibits referred to and identified in the certificate of Honorable Ralph E. Campbell and attached to the record of the evidence in this case be by the Clerk of this Court properly and securely sealed and transmitted with the record in this cause to the United States Circuit Court of Appeals for the Eighth Circuit, and that this order be made part of the record on appeal, of what was done relative to said motion.

FRANK A. YOUNG,  
Judge.

Endorsed: Filed in the District Court on November 19, 1918.

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266 (Clerk's Certificate to Transcript.)

United States of America,  
Eastern District of Oklahoma—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that

the above and foregoing is a full, true and correct transcript of so much of the record in the case of George Bluejacket vs. Paul A. Ewert, Equity No. 2293, as was ordered by praecipe of counsel herein to be prepared and authenticated except the proposed amended Petition of Plaintiff's which was never made a part of the record in this case, as the same appears from the records in my office.

And I further certify that the original Citation, with service thereon, is hereto attached and herewith returned.

Seal  
U. S. Dist. Court,  
Eastern Dist. of  
Oklahoma.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the City of Muskogee, this 19th day of November, A. D. 1918.

R. P. HARRISON,  
Clerk.  
By H. E. Boudinot,  
Deputy.

Filed November 20, 1918 E. E. Koch, Clerk.

1 (Notice of and Motion to Dismiss Appeal and strike from Docket.)

In the United States Circuit Court of Appeals, for the Eighth Circuit.

George Redeagle, Appellant,  
No. .... vs. Equity.  
Paul A. Ewert, Appellee.

To The Above Named Appellant, And To A. Scott Thompson  
And Hiram W. Currey, His Attorneys Of Record:

Please Take Notice, That the appellee in the above entitled action will bring on for hearing a motion to dismiss the appeal and strike from the docket the case of George Redeagle vs. Paul A. Ewert, appellee, on Monday, the 6th day of January, 1919, at ten o'clock A. M. at the City of St. Louis, State of Missouri, before the United States Circuit Court of Appeals for The Eighth Circuit, or as soon thereafter as the said Court can hear said motion.

Please Take Notice And Govern Yourselves Accordingly.

A copy of said above named motion is hereunto attached and made a part hereof.

Dated this 3<sup>rd</sup> day of January, 1919.

PAUL A. EWERT,  
Appellee and Attorney for Appellee.

Received copy above notice and motion attached this January 3d, 1919.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
Attorneys for Appellant.

2 (Motion to Dismiss Appeal and Strike from Docket.)

In the United States Circuit Court of Appeals, for the  
Eighth Circuit.

George Redeagle, Appellant,  
No. .... vs. Equity.  
Paul A. Ewert, Appellee.

Comes now Paul A. Ewert, the appellee in the above entitled action, and moves the Court:

First. To strike the above entitled action from the docket of said above named Court.

Second. To dismiss the appeal in the above entitled action.

The motion in each instance, is based upon the files and transcript of the record in said case, now on file in said court, from which it affirmatively appears that the said suit was prior to said appeal, dismissed and settled by stipulation between the plaintiff personally and said defendant.

And for the further reason that the order allowing the petition for appeal in said case was fraudulently obtained and allowed by the trial Judge in this, that the said Attorneys for the plaintiff knew and had knowledge of the fact that the stipulation for dismissal of said suit was on file prior to the time that [the] presented their said petition for appeal to the Honorable Ralph E. Campbell, District Judge, and obtained from him the order allowing said appeal, all as more fully appears by the record and will be made to more fully appear to this Court by affidavit of the Deputy Clerk of the United States District Court in and for the Eastern District of Oklahoma, and by the Affidavit of the Honorable Ralph E. Camp-

bell, formerly District Judge of the United States, as appellee verily believes.

PAUL A. EWERT.

Appellee, and Attorney for Appellee.

Endorsed: Filed in the U. S. Circuit Court of Appeals,  
January 6, 1919.

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- 3 (Order referring cause back to District Court with directions to investigate circumstances of stipulation for dismissal, etc.)

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1918.

Monday, January 6, 1919.

Appeal from the District Court of the United States for the  
Eastern District of Oklahoma.

George Redeagle, Appellant,

No. 5315. vs.

Paul A. Ewert.

This cause came on this day to be heard on the motion of appellee to dismiss the appeal on the ground that by stipulation of parties the suit was dismissed in the District Court prior to the allowance of the appeal to this Court, Mr. Paul A. Ewert, pro se, appearing in support of said motion and Mr. Arthur S. Thompson in opposition thereto.

On consideration whereof, it is now here ordered by this Court, that this cause be, and the same is hereby, referred back to the District Court of the United States for the Eastern District of Oklahoma, with directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said Court on July 17, 1918, as appears from the transcript of the record now on file in this Court, and to report to this Court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the motion to dismiss will stand continued in this Court pending the receipt of the report from said District Court.

(Endorsed): Filed in the U. S. Circuit Court of Appeals,  
Jan. 6, 1919.

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4 (Notice of Petition for Revivor.)

In the United States Circuit Court of Appeals, for the  
Eighth Judicial Circuit.

George Redeagle, Appellant,

vs.

Paul A. Ewert, Appellee.

The appellee in the above entitled cause will take notice that the appellant, George Redeagle, having departed this life on the 19th day of November, 1918, and John S. Kendall having been duly appointed his Administrator on the 20th day of December, 1918, by the Probate Court of Ottawa County, Oklahoma, the said Administrator will, at the City of St. Louis, on the 7th day of February, 1919, file in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, and in the United States Circuit Court of Appeals at St. Louis, in the State of Missouri, an application to said court and move said court to order that the action wherein George Redeagle is appellant and Paul A. Ewert is appellee be revived in the name of John S. Kendall, Administrator of the Estate of George Redeagle, deceased, and the appellee, Paul A. Ewert, will take notice that plaintiff, George Redeagle, having departed this life on the 19th day of November, 1918, and left as his only heirs at law his three children,

5 Josephine Abrams, LeRoy Redeagle and Doane Redeagle, the said Josephine Abrams, LeRoy Redeagle and Doane Redeagle, heirs at law of George Redeagle, deceased, will, on the 7th day of February, 1919, make application to said court at the office of the Clerk of the United States Circuit Court of Appeals in the City of St. Louis, that the said action of George Redeagle, appellant, vs. Paul A. Ewert, appellee, be revived in the name of the said Josephine Abrams, LeRoy Redeagle and Doane Redeagle, heirs at law of the said George Redeagle, deceased, and will ask leave to be entered as parties appellant in said cause and prosecute said cause to final determination.

A. SCOTT THOMPSON,

HIRAM W. CURREY,

Attorneys for John S. Kendall  
Administrator of the Estate of  
George Redeagle, deceased, and  
Attorney for the aforesaid heirs at  
law of the said George Redeagle,  
deceased.

State of Missouri,  
County of Jasper—ss.

Hiram W. Currey, being duly sworn, upon his oath states that he is one of the attorneys for the said John S. Kendall, Administrator of the Estate of George Redeagle, deceased, and of the heirs at law of said George Redeagle, deceased; that a copy of the above notice was by him duly enclosed in an envelope, properly stamped and addressed to Paul A. Ewert, Frisco Building, Joplin, Jasper County, Missouri, and  
6 the said letter was deposited in the Post Office at the hour of four-ten P. M., February 5, 1919.

HIRAM W. CURREY,

Subscribed and sworn to before me this 5th day of February, 1919.

(Notarial Seal)

LEA PACE,  
Notary Public.

My commission expires January 18, 1923.

Endorsed: Filed in the U. S. Circuit Court of Appeals February 7, 1919.

7 (Petition suggesting the death of George Redeagle and to revive cause in the names of John S. Kendall, Administrator, etc., and heirs at law, as appellants.)

In the United States Circuit Court of Appeals, for the Eighth Judicial Circuit.

George Redeagle, Appellant,

No. . . . . vs.

Paul A. Ewert, Appellee.

Comes now John S. Kendall and represents and shows to this Honorable Court that the appellant, George Redeagle, deceased on the 19th day of Novemebr, 1918; that at the time of his death and for a long time prior thereto he was a resident and citizen of Ottawa County, in the State of Oklahoma; that the said George Redeagle died intestate; that on the 20th day of December, 1918, your petitioner, John S. Kendall, was duly appointed Administrator of the estate of the said George Redeagle, deceased, by the Probate Court of Ottawa County, Oklahoma, and that your petitioner duly qualified as such Administrator and is now duly qualified and acting Administrator of the Estate of the said George Redeagle, deceased.

8 And your petitioner prays that said case be revived in his name and that he be entered herein as a party plaintiff and permitted to prosecute this suit as such Administrator.

And come, also, Josephine Abrams, age 29 years, LeRoy Redeagle, age twenty-six years, and Doane Redeagle, age twenty-three years, and represent and show to this Honorable Court that they and each of them are children and heirs at law, and being all the children and heirs at law, of the said George Redeagle, deceased; and the said Josephine Abrams, LeRoy Redeagle and Doane Redeagle pray that they be permitted to be made parties plaintiff as the heirs at law of the said George Redeagle, deceased, with the said John S. Kendall, Administrator of the Estate of the said George Redeagle, deceased; and that they jointly with the said John S. Kendall become parties to this suit and be permitted as such parties to prosecute the appeal herein.

JOHN S. KENDALL,  
Administrator of the Estate of  
George Redeagle, deceased.

JOSEPHINE ABRAMS,  
LEROY REDEAGLE,  
DOANE REDEAGLE,  
Heirs at Law of George Redeagle,  
deceased.

A. SCOTT THOMPSON,  
By Hiram W. Currey, Attorneys  
for Petitioners.

9 State of Missouri,  
County of Jasper—ss.

Hiram W. Currey, being duly sworn, upon his oath states that he is one of the attorneys of record for George Redeagle, deceased, the appellant in the above entitled cause; that said George Redeagle deceased on the 19th day of November, 1918; that the said John S. Kendall is the duly appointed and acting Administrator of the Estate of George Redeagle, deceased, duly appointed and qualified under the laws of Oklahoma, and in Ottawa County, Oklahoma; and that the said Josephine Abrams, LeRoy Redeagle and Doane Redeagle are, according to the best knowledge and information of this affiant, the children and only heirs at law of the said George Redeagle, deceased.



Affiant further says that he is duly authorized by the said John S. Kendall, Administrator, and the said heirs at law of the said George Redeagle, deceased, to make this application to revive said cause and prosecute the same in the name of the said John S. Kendall, Administrator, and of the said Josephine Abram, LeRoy Redeagle and Doane Redeagle, as the heirs at law of the said George Redeagle, deceased.

HIRAM W. CURREY.

Subscribed and sworn to before me this 5th day of February, 1919.

(Notarial Seal)

LEA PACE,  
Notary Public.

My Com. Expires Jan. 18, 1923.

Endorsed: Filed in the U. S. Circuit Court of Appeals, February 7, 1919.

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10 (Order reviving cause in the names of John S. Kendall, Administrator, etc., et al., as appellants.)

United States Circuit Court of Appeals, Eighth Circuit.  
December Term, 1918.

Friday, February 7, 1919.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

George Redeagle, Appellant,  
No. 5315. vs.  
Paul A. Ewert.

This cause is this day called to the attention of the Court upon the notice and motion of counsel for appellant suggesting the death of the appellant, George Redeagle, and for an order reviving this cause in the names of the Administrator and children of the said George Redeagle, deceased; Mr. Paul A. Ewert, appellee, appearing in his own behalf, but counsel for appellant not being present.

In pursuance of said motion, it is now here ordered by this Court that this cause be, and the same is hereby, revived in the names of John S. Kendall, Administrator of the Estate of George Redeagle, deceased, and Josephine Abrams, LeRoy Redeagle and Doane Redeagle, [childred] and heirs at law as appellants in the place and stead of George Redeagle, de-

ceased, with the same force and effect as if this cause had not abated by the death of said appellant.

(Endorsed): Filed in the U. S. Circuit Court of Appeals, Feb. 7, 1919.

11 (Notice and Affidavit of service of Application of Marie Tate Redeagle to be made party appellant.)

In the Circuit Court of Appeals of the United States, Eighth Judicial Circuit.

George Redeagle, Appellant,  
No. 5315. vs.  
Paul A. Ewert, Appellee.

To J. S. Kendall, Administrator of the Estate of George Redeagle, Deceased, Sophia Redeagle Abrams, Leroy Redeagle, Doane S. Redeagle, and H. W. Currey and A. Scott Thompson, their Attorneys:

Please Take Notice, that Marie Tate Redeagle, lawful wife of George Redeagle, deceased, will on Wednesday, February 26th, 1919, present the attached application to be made a party appellant in the above entitled cause to the Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, at ten o'clock in the forenoon of said date, or as soon thereafter as the same can be heard by the Court. If you have any objections to her said application, you should be present at that time.

Dated this 24th day of February, 1919.

MARIE TATE REDEAGLE,  
By Venoble & Clark, Her Attorneys.

Service of the attached application to be made a party appellant, together with notice of the time and place of hearing said application is hereby admitted, and the receipt of copy of each of said papers is hereby acknowledged, this 24th day of February, 1919.

.....,  
.....,  
Attorneys for Appellant.

12 Affidavit of Service.

State of Missouri,  
County of Jasper—ss.

Cora Hallam, of lawful age, being first duly sworn, upon her oath deposes and says that on the 24th day of February, 1919, she served the within and attached Application to be made Party Appellant, and Notice thereof upon said within named appellants, by handing to and leaving with Leah Pace, the Clerk of the said H. W. Currey, attorney for said Appellants, at his law office in the City of Joplin, Missouri, a true and correct copy of said application and notice of the time and place of hearing same.

CORA HALLAM.

Subscribed and sworn to before me this 24th day of February, 1919.

(Notarial Seal)

PAUL A. EWERT,  
Notary Public, Jasper County, Missouri.

My commission expires April 20, 1922.

13 (Application of Marie Tate Redeagle to be made party appellant.)

In the Circuit Court of Appeals of the United States, Eighth Judicial Circuit.

George Redeagle, Appellant,  
No. 5315. vs.  
Paul A. Ewert, Appellee.

Comes now Marie Tate Redeagle and shows to the Court that she was on the 12th day of July, 1918, duly and lawfully married to George Redeagle, the appellant in the above entitled action; that the said George Redeagle departed this life on the 19th day of November, 1918; that the said George Redeagle was not divorced from her, nor was she divorced from the said George Redeagle prior to his death; that she is informed that the above entitled suit is pending in said Court and asks that the said suit be revived in the name of herself, the said Marie Tate Redeagle, as one of the heirs of George Redeagle, deceased, and asks that the Court enter her name as

one of the parties appellant in said cause, with a view to prosecuting the same to a final determination.

MARIE TATE REDEAGLE,  
By Venoble & Clark, Her Attorneys.

Endorsed: Filed in the U. S. Circuit Court of Appeals,  
February 25, 1919.

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14 (Stipulation to postpone determination of application  
of Marie Tate Redeagle to be made a party ap-  
pellant.)

In the United States Circuit Court of Appeals [of] the Eighth  
Circuit.

George Redeagle, Appellant,  
No. 5315. vs.  
Paul A. Ewart, Appellee.

Whereas, the matter of whether Marie Tate Redeagle was the lawful wife of George Redeagle, deceased, at the time of his death, is now pending before Commissioner of Indian Affairs through his agent at the Quapaw Agency at Wyandotte, Oklahoma, and the hearing thereon is set for March 21, 1919,

Now Therefore, It Is Agreed: that the application of the said Marie Tate Redeagle to become a party appellant in the above entitled cause shall not be determined until after the determination of the above question by the said Commissioner of Indian Affairs.

Dated February 25, 1919.

MARIE TATE REDEAGLE,  
VENOBLE & CLARK,  
Attorneys for Marie Tate Redeagle.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
Attorneys for appellant.

Endorsed: Filed in the U. S. Circuit Court of Appeals, Feb-  
ruary 27, 1919.

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- 15 (Application for withdrawal of stipulation to postpone determination of application of Marie Tate Redeagle to be made a party appellant.)

In the Circuit Court of Appeals of the United States, Eighth Judicial Circuit.

George Redeagle, Appellant,  
No. 5315. vs.

Paul A. Ewert, Appellee.

Comes now Marie Tate Redeagle, and shows to the Court that her attorneys are Venoble & Clark, of Picher, Oklahoma; that the junior member of said firm, Mr. Clark, has at all times had in personal charge the said Redeagle matter and has had all conferences with the said Marie Tate Redeagle; that on the 25th day of February, 1919, the said Venoble & Clark, through their Mr. Venoble, was approached by the attorneys for appellants, and not knowing of the arrangement and understanding and plans of the said Clark, Mr. Venoble signed the said stipulation which was on February 27, 1919, filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, agreeing that the application to have Marie Tate Redeagle made a party appellant in the above entitled cause should not be determined until after the determination of the heirs of the said George Redeagle, deceased, at a hearing set for March 21, 1919.

Now Therefore, It being made to appear that such a course would not be advantageous to all parties concerned, and particularly to Marie Tate Redeagle, the said Venoble & Clark do hereby rescind said stipulation and ask the said Circuit Court of Appeals to at once cause the application of the said Marie Tate Redeagle to be made a party appellant in said cause to be considered by said Court. That the rights of the parties can in no wise be changed by such a course and no benefit could arise by deferring the hearing of the said application until on and after the 21st day of March, 1919, because on said date the hearing at said Quapaw Agency will be only a temporary matter wherein the Indian Agent takes testimony and makes recommendations as to his findings; that

- 16 after said finding has been made, the papers must be sent to the Office of the Commissioner of Indian Affairs at Washington, D. C., with the usual delays incident to such matters; that when the said Commissioner of Indian Affairs does make said finding, the same is subject to an appeal to the Office of the Secretary of the Interior on re-

hearing, and after that fashion, a delay of many months might be occasioned by reason of waiting for said hearing.

The said Marie Tate Redeagle and her attorneys, Venoble & Clark, have no interest one way or the other, except to protect the interests of their client, and in view of the fact that the litigation now pending in the above entitled cause has been in the Courts for two or three years, and valuable property interests are tied up or are attempted to be tied up, the said Marie Tate Redeagle by her said attorneys, does hereby ask that said stipulation so filed in said Court on the 27th day of February, 1919, be withdrawn and that her said application be at once considered by the said Court and that she be made one of the parties appellant in said action.

Dated this 3rd day of March, 1919.

MARIE TATE REDEAGLE,  
By Venoble & Clark, Her Attorneys.

I hereby certify that I mailed a true and correct copy of this instrument to A. Scott Thompson, Attorney, at Miami, Oklahoma, this 3rd day of March, 1919.

A. CLARK,  
of Venoble & Clark.

Endorsed: Filed in the U. S. Circuit Court of Appeals  
March 5, 1919.

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17 (Order denying application for withdrawal of stipulation to postpone determination of application of Marie Tate Redeagle to be made party appellant.

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1918.

Saturday, March 8, 1919.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

John S. Kendall, Administrator of the Estate of George Redeagle, deceased, et al., Appellants,  
No. 5315. vs.

Paul A. Ewert.

The application of Marie Tate Redeagle to be made a party appellant in this cause, the stipulation signed by counsel for said Marie Tate Redeagle and the appellants for a postpone

ment pending determination of certain proceedings before the Commissioner of Indian Affairs and the application of counsel for said Marie Tate Redeagle for a withdrawal of the stipulation for postponement having been called to the attention of the Court,

It is now here ordered by the Court that the stipulation for postponement filed February 27, 1919, will be observed and the application for the withdrawal of said stipulation is hereby denied.

(Endorsed): Filed in the U. S. Circuit Court of Appeals, Mar. 8, 1919.

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(*Appearance of Counsel for Appellant.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5315.

GEORGE REDEAGLE, Appellant,

VS.

PAUL A. EWERT.

The Clerk will enter my appearance as Counsel for the Appellant.

HIRAM W. CURREY,

Joplin, Mo.

ARTHUR S. THOMPSON,

Miami, Oklahoma.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 25, 1918.

(*Appearance of Counsel for Appellee.*)

No. 5315.

JOHN S. KENDALL, Administrator, etc., et al., Appellants,

VS.

PAUL A. EWERT.

The Clerk will enter my appearance as Counsel for the Appellee.

PAUL A. EWERT.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 28, 1919.

212 (*Motion to Dismiss Appeal and Motion to Strike from Appeal Docket.*)

Comes now Paul A. Ewert, the appellee in the above entitled action, and shows to the Court that on the 4th day of January, 1919, said appellee filed in this Court a certain motion to dismiss appeal and motion to strike from appeal docket, being in the following words (omitting the caption), to-wit:

"Comes now Paul A. Ewert, the appellee in the above entitled action, and moves the Court:

First. To strike the above entitled action from the docket of said above named Court.

Second. To dismiss the appeal in the above entitled action.

The motion in each instance, is based upon the files and transcript of the record in said case, now on file in said court, from which it affirmatively appears that the said suit was prior to said appeal, dismissed and settled by stipulation between the plaintiff personally and said defendant.

And for the further reason that the order allowing the petition for appeal in said case was fraudulently obtained and allowed by the trial Judge in this, that the said Attorneys for the plaintiff knew and had knowledge of the fact that the stipulation for dismissal of said suit was on file prior to the time that they presented their said petition for appeal to the Honorable Ralph E. Campbell, District Judge, and obtained from him the order allowing said appeal, all as more fully appears by the record and will be made to more fully appear to this Court by affidavit of the Deputy Clerk of the United States District Court in and for the Eastern District of Oklahoma and by the affidavit of the Honorable Ralph E. Campbell, formerly District Judge of the United States, as appellee verily believes."

That the said motion came duly on for hearing before this Court on the 6th day of January, 1919, the appellants appearance by their Attorneys, the appellee appearing in person as his own attorney. That upon said hearing it appeared that that appellee's said motion to dismiss the appeal and strike the case from the appeal docket, was based upon the stipulation for dismissal made and entered into between the plaintiff personally and the defendant, dated July 5, 1918, and thereafter filed in the office of the Clerk of the United States District Court in and for the Eastern District of Oklahoma on the 20th day of July, 1918, said stipulation (omitting the caption) being in the following words to-wit:

"It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5th day of July, 1918.

"And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

(Signed)

GEORGE REDEAGLE,  
Plaintiff.  
PAUL A. EWERT,  
Defendant.

"We, the undersigned, do hereby certify that we were present when the above stipulation for dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that

George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequences of said actions.

(Signed)

J. C. AMMERMAN.  
I. E. ENYERT."

It further appeared from the admissions of counsel for the appellants, made in open Court, that said counsel were aware of the making and filing of said stipulation in said Court as early as the 21st day of August, 1918. That notwithstanding the fact that the said stipulation was on file, they petitioned for appeal, without advising Judge Campbell of the trial Court of the fact that the said stipulation for dismissal was on file; that without knowledge of the fact that said stipulation for dismissal was so on file, the Court allowed said petition for appeal.

That on the hearing of said motion, counsel for the appellants further directed the attention of this Court to a certain paper found among the files of the case as sent up from the trial Court to the Circuit Court of Appeals. It further appeared from the record in said case that said paper was not properly a part of the files, because not included in the præcipe of either party. Said paper, however, was directed to the attention of this Court and in the following words, to-wit:

"Comes now the plaintiff in the above entitled cause and represents and shows to this Honorable Court that heretofore, to-wit: On the 20th day of July, 1918, there was filed in the above entitled case with the Clerk of this Court, but without leave of this Court, a paper purporting to be the tenor following, viz:

"It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the Defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed with prejudice on this 5th day of July, 1918.

And the party of the first part further certifies that said suit was not voluntarily instituted by him but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said Plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit, George Redeagle versus Paul A. Ewert, defendant."

"Your petitioner avers that since the filing of said instrument of writing by the said Paul A. Ewert, the plaintiff, by his attorneys, A. Scott Thompson and Hiram W. Currey, has duly made his appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the decree entered in the above entitled cause on the 4th day of March, 1918, dismissing the Plaintiff's bill and adjudging that Plaintiff take nothing by his suit.

"Plaintiff shows to this Court that he is a full blood Quapaw Indian of the Quapaw Indian Tribe, and that the lands involved in the

aforesaid suit are Quapaw Indian allotted restricted lands, the alienation thereof being restricted for twenty-five years, which has not elapsed; that the suit aforesaid was and is a suit to set aside a deed to the said lands made to the defendant, Paul A. Ewert.

"Plaintiff further states that his attorneys in the aforesaid cause were, and are, A. Scott Thompson of Miami, Oklahoma, and Hiram W. Currey of Joplin, Missouri; that about the time the decree was entered in this cause and a short time thereafter the said A. Scott Thompson left the city of Miami and went to the City of Washington, D. C. on business, and has been engaged in the said Washington, D. C., ever since said time, so plaintiff has had no opportunity of consulting with his said attorney; that plaintiff was not acquainted with his said attorney, Hiram W. Currey; did not know where his office was, never having seen the said Currey but once prior to the time of the trial of the said cause; that the said Paul A. Ewert, by letters and oral representations prevented this plaintiff from consulting with his said attorneys before signing the writing herein set out, and by false statements and false representations orally and in writing, induced the plaintiff to believe that his said attorneys had abandoned his said cause and did not intend to appeal the same to the Circuit Court of Appeals, and represented to the plaintiff that the said cause was not begun by this plaintiff's said attorneys in good faith, but fraudulently and for the sole and only purpose of clouding the plaintiff's title, and represented to this plaintiff that

215 his said attorneys well knew that there was no merit in said cause, but by false representations and false statements and by preventing the plaintiff from consulting with his said lawyers, induced the plaintiff to believe that his said cause was entirely without merit, and for that reason it was best for this plaintiff to make an agreement with the said Paul A. Ewert to dismiss said cause; and, further represented to this plaintiff on the 1st day of July, 1918, that the time for appeal had expired, or that it would expire a very short time thereafter, which statement was false and untrue; that in fact two whole months within which to make plaintiff's said appeal, and intended to make said appeal, and had not abandoned plaintiff's said cause; that the plaintiff was, by the said defendant, misled, deceived and fraudulently induced to execute the writing aforesaid.

"Wherefore, and the premises considered, plaintiff prays that a decree be entered herein cancelling, setting aside and holding for naught said instrument of writing, as a contract between the plaintiff and said defendant; that said paper writing be, by order of this court, stricken from the records and in all things annulled.

(Signed)

(Signed)

A. SCOTT THOMPSON,

HIRAM W. CURREY,

*Attorneys for Plaintiff.*

That this Court thereupon caused the following order to be made to-wit:

"This cause came on this day to be heard on the motion of appellee to dismiss the appeal on the ground that by stipulation of parties

the suit was dismissed in the District Court prior to the allowance of the appeal to this Court, Mr. Paul A. Ewert, pro se, appearing in support of said motion and Mr. Arthur S. Thompson in opposition thereto.

"On consideration whereof, it is now here ordered by this Court, that this cause be, and the same is hereby, referred back to the District Court of the United States for the Eastern District of Oklahoma, with directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said Court on July 17, 1918, as appears from the transcript of the record now on file in this Court, and to report to this Court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the motion to dismiss will stand continued in this Court pending the receipt of the report from said District Court.

January 6, 1919."

That in pursuance of said order so made, the said matter came on for hearing before the Honorable Robert L. Williams, Judge of the United States District Court for the Eastern District of Oklahoma, on April 7, 1919, and testimony was taken for two days; that thereafter, the said Court made its findings under said order, said findings being returned into this Court and are now on file herein, being in the following words and figures, to-wit:

216 "On January 6, 1919, the United States Circuit Court of Appeals for the Eighth Circuit, in the above styled and numbered cause, made and caused to be entered the following order:

This cause came on this day to be heard on the motion of the appellee to dismiss the appeal on the ground that by stipulation of parties the suit was dismissed in the District Court prior to the allowance of the appeal to this Court, Mr. Paul A. Ewert, pro se, appearing in support of said motion, and Mr. Arthur S. Thompson in opposition thereto.

"On consideration whereof, it is now here ordered by this Court, that this cause be, and the same is hereby referred back to the District Court of the United States for the Eastern District of Oklahoma, with directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said Court on July 17, 1918, as appears from the transcript of the record now on file in this Court, and to report to this Court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the motion to dismiss will stand continued in this Court pending the receipt of the report from said District Court."

"On said reference, said matter was set for hearing on a day certain with notice to all parties in interest. On said date, A. Scott Thompson, Esq., Hiram W. Currey, Esq., appeared for plaintiff, and Paul A. Ewert, Esq., prop. per. and both sides announced ready for such hearing. All witnesses offered were examined, the evidence reported and reduced to writing, a copy of which is herewith submitted and designated as Exhibit "A."

"I find that said stipulation filed with the United States Court for

the Eastern District of Oklahoma on July 17, 1918, was executed by George Redeagle on or about July 5, 1918, being signed by him in the office of Paul A. Ewert in the City of Joplin in the State of Missouri, the said Paul A. Ewert being at that time absent from the State; that said instrument was drawn or prepared by the said Ewert before his departure from the State and left with his secretary and stenographer, Miss Cora Hallam, who furnished it to George Redeagle when he went to the office of the said Ewert for the purpose of executing such instrument. Said instrument was signed by said George Redeagle in the presence of J. C. Ammerman and I. E. Enyert, who attested the same as subscribing witnesses. I find that George Redeagle understood the nature of the instrument and its contents and knew what he was doing and executed the same of his own free will and voluntary act and deed for the purposes of settling said litigation and by executing the same he intended to abandon the appeal in said cause and release all claim to the land in controversy in said action; that he was sober at the time he executed the same and such execution was made without any misrepresentations. At the time he signed said instrument, Miss Cora Hallam, as the representative of Paul A. Ewert, delivered him a check on a bank in Joplin for seven hundred dollars as a consideration for such execution, said George Redeagle accepting said check and cashed the same and appropriated the proceeds to his own use and benefit.

"I find as a matter of fact and as a conclusion of law that said stipulation is valid, and in fact and in law is a final settlement of the issues involved in the above styled case.

217 "This, the 6th day of September, A. D. 1919.

(Signed)

R. L. WILLIAMS,  
*United States District Judge for the  
Eastern District of Oklahoma.*

"The Clerk of this court is hereby directed to transmit to the Clerk of the United States Court of Appeals for the Eighth Circuit, this certificate, together with the evidence hereto attached, which is a record of all the evidence taken in said matter—a transcript comprising 199 pages and consisting of the evidence of Mrs. A. Loucks, A. E. Wallace, A. W. Abrams, A. L. Jones, A. L. Harvey, J. E. Pottorff, and Hiram W. Currey, for plaintiff, (appellant), and Ira C. Deaver, S. J. McCleary, Paul A. Ewert, Cora Hallam, J. C. Ammerman, I. E. Enyert, Stella De Honey, and R. A. Cousatt for defendant (appellee).

(Signed)

R. L. WILLIAMS,  
*United States District Judge."*

Now therefore: Said appellee renews his said motion above set forth and filed in this Court on the 4th day of January, 1919, basing the same upon the files and records of this Court:

And Notice is hereby given to the said John S. Kendall, Administrator of the Estate of George Redeagle, Deceased, Leroy Redeagle, Doane S. Redeagle, and Sophia Redeagle, now Abrams, appellants

in the above cause, and to A. Scott Thompson and Hiram W. Currey, their attorneys, that the said motion will be presented to the above named Court in the City of St. Louis, State of Missouri, on Monday, the 1st day of December, 1919, at ten o'clock in the forenoon of said date, or as soon thereafter as said Court can hear the same.

Dated this 13th day of November, 1919.

PAUL A. EWERT,  
*Appellee and Attorney for Appellee.*

218 Service of the above motion, and notice thereof, by the deliverance and acceptance of a copy thereof, is hereby admitted, this 13th day of November, 1919.

A. SCOTT THOMPSON, AND  
HIRAM W. CURREY,  
*Attorneys for Appellants.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 14, 1919.

219 (*Findings and Conclusions of District Court upon Hearing on the Investigation of Stipulation for Dismissal.*)

In the United States District Court in and for the Eastern District of the State of Oklahoma.

No. 2293, District Court.

No. 5315, Circuit Court.

GEORGE REDEAGLE, Appellant,

v.

PAUL A. EWERT, Defendant.

On January 6, 1919, the United States Circuit Court of Appeals for the Eighth Circuit, in the above styled and numbered cause, made and caused to be entered the following order:

"This cause came on this day to be heard on the motion of the appellee to dismiss the appeal on the ground that by stipulation of parties the suit was dismissed in the District Court prior to the allowance of the appeal to this Court, Mr. Paul A. Ewert, pro se, appearing in support of said motion, and Mr. Arthur S. Thompson in opposition thereto.

On consideration whereof, it is now here ordered by this Court, that this cause be, and the same is hereby referred back to the District Court of the United States for the Eastern District of Oklahoma, with directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said Court on July 17, 1918, as appears from the transcript of the record now on file in this Court, and to report to this Court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the



motion to dismiss will stand continued in this Court pending the receipt of the report from said District Court."

On said reference, said matter was set for hearing on a day certain with notice to all parties in interest. On said date, A. Scott Thompson, Esq., Hiram W. Currey, Esq., appeared for plaintiff, and Paul A. Ewert, Esq., prop. per., and both sides announced ready for such hearing. All witnesses offered were examined, the evidence  
220 reported and reduced to writing, a copy of which is herewith submitted and designated as "Exhibit A."

I find that said stipulation filed with the United States Court for the Eastern District of Oklahoma on July 17, 1918, was executed by George Redeagle on or about July 5, 1918, being signed by him in the office of Paul A. Ewert in the City of Joplin in the State of Missouri, the said Paul A. Ewert being at that time absent from the state; that said instrument was drawn or prepared by the said Ewert before his departure from the state and left with his secretary and stenographer, Miss Cora Hallam, who furnished it to George Redeagle when he went to the office of said Ewert for the purpose of executing such instrument. Said instrument was signed by said George Redeagle in the presence of J. C. Ammerman and I. E. Enyert, who attested the same as subscribing witnesses. I find that George Redeagle understood the nature of the instrument and its contents and knew what he was doing and executed the same of his own free will and voluntary act and deed for the purposes of settling said litigation and by executing the same he intended to abandon the appeal in said cause and release all claim to the land in controversy in said action; that he was sober at the time he executed the same and such execution was made without any misrepresentations. At the time he signed said instrument, Miss Cora Hallam, as the representative of Paul A. Ewert, delivered him a check on a bank in Joplin for seven hundred dollars as a consideration for such execution, said George Redeagle accepting said check and cashed the same and appropriated the proceeds to his own use and benefit.

I find as a matter of fact and as a conclusion of law  
221 that said stipulation is valid, and in fact and in law is a final settlement of the issues involved in the above styled case.

This, the 6th day of September, A. D., 1919.

R. L. WILLIAMS,

*United States District Judge for the  
Eastern District of Oklahoma.*

The Clerk of this court is hereby directed to transmit to the clerk of the United States Court of Appeals for the Eighth Circuit, this certificate, together with the evidence hereto attached, which is a record of all the evidence taken in said matter—a transcript comprising 199 pages and consisting of the evidence of Mrs. A. Loucks, A. E. Wallace, A. W. Abrams, A. L. Jones, A. L. Harvey, J. E. Pottorff, and Hiram W. Currey, for plaintiff, (appellant), and Ira C. Deaver, S. J. McCleary, Paul A. Ewert, Cora Hallam, J. C.

Ammerman, I. E. Enyert, Stella De Honey, and R. A. Cousatt for defendant (appellee).

R. L. WILLIAMS,  
*United States District Judge.*

Filed Sep. 8, 1919.

R. P. HARRISON,  
*Clerk U. S. District Court.*

(Endorsed:) No. 5315. John S. Kendall, as administrator, etc., et al., appellants, vs. Paul A. Ewert. Findings and conclusions of the District Court under order of reference, etc. Filed Dec. 1, 1919. E. E. Koch, clerk.

222 (*Transcript of Testimony in District Court on Investigation of Circumstances of Stipulation for Dismissal of Suit, Filed in said Court on July 17, 1918.*)

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2293, Equity.

GEORGE REDEAGLE, Plaintiff,

VS.

PAUL A. EWERT, Defendant.

Now on this 7th day of April, 1919, in the District Court of the United States for the Eastern District of Oklahoma, at Muskogee, came on for trial the above entitled and numbered cause on motion to dismiss, before the Honorable R. L. Williams, Judge presiding; and thereupon appeared the plaintiff by his counsel H. W. Curry, Esq., Leslie J. Lyons, Esq. and A. Scott Thompson, Esq.; and appeared the defendant Paul A. Ewert in his own behalf; whereupon the parties hereto having announced ready for trial proceedings herein were had as follows:

Mr. Ewert: May it please the court, this is a matter with which I am not familiar as far as the practice is concerned. It is stated on the docket a motion to dismiss. However that is not what this matter embodies and I am not certain as to whether or not—

The Court: Is this an equity case?

Mr. Ewert: This is an equity case.

The Court: That is in effect a general demurrer.

Mr. Ewert: That is true, Your Honor. After I have made my statement you will know what are the facts. It really isn't a motion to dismiss at all as stated there. This case comes before this court at this time in the following unusual manner: There was a case

223 pending in this court instituted two or three years ago entitled Redeagle vs. Ewert. A motion to dismiss was made to dismiss the petition and Judge Campbell granted that motion. An attempt was made to re-open the case and the court denied that and entered judgment that the petition didn't state facts sufficient to constitute a cause of action and dismissed it. That was on the 4th day of March I think 1918. On the 5th day of July 1915, and before an appeal had been taken, the defendant in the suit, Ewert, myself, by reason of the manner in which it is alleged, and the proof will show the case was first instituted, made a settlement out of court with the defendant, or with the plaintiff, George Redeagle.

The Court: Is he the plaintiff in this case?

Mr. Ewert: George Redeagle is the plaintiff but has since died and I am the defendant.

The Court: Is an appeal pending in this case?

Mr. Ewert: Yes, I will get to that in a moment. On the 5th day of July, 1918, stipulation for dismissal was signed by Redeagle in my office in the City of Joplin, during my absence, by my clerk and the reason of this matter will appear in this case. Thereafter the plaintiff's attorney, attorney for Redeagle, appealed his case, although stipulation for dismissal as made was on file in this court, and without advising Judge Campbell that this stipulation was of record the appeal was taken. It went to the Circuit Court of Appeals and of course as a part of the record this stipulation for dismissal. I made a motion to dismiss the appeal on the ground that the case was settled. Plaintiff's counsel—in the meantime plaintiff had died—plaintiff's counsel objected to that motion on two grounds; first, that the plaintiff had died and that notice of his death  
224 be made and the case revived in the name of his heirs, and the case was revived in the name of the administrator together with the heirs. The court further, upon the complaint made by Mr. Thompson who was present, said—and the complaint was that this stipulation had been taken from George Redeagle by me under certain conditions which were not proper, or whatever it was that he alleged, and thereupon the court said that the motion to dismiss would be denied for the present until the case had been revived, and in the meantime the court made an order, upon the ground that it was not a trial court, that it could not determine the regularity and circumstances under which that disposition was taken, and sent the matter back to this court, and so on. Omitting the caption the order is as follows:

"This cause came on this day to be heard on the motion of appellee to dismiss the appeal on the ground that by stipulation of parties the suit was dismissed in the District Court prior to the allowance of the appeal to this court, Mr. Paul A. Ewert, pro se, appearing in support of said motion and Mr. Arthur S. Thompson in opposition thereto.

"On consideration whereof, it is now here ordered by this Court, that this cause be, and the same is hereby, referred back to the District Court of the United States for the Eastern District of Oklahoma, with directions to investigate the circumstances of the stipu-

lution for dismissal of the suit filed in said Court on July 17, 1918, as appears from the transcript of the record now on file in this court, and to report to this court its findings and evidence whether in fact and law said stipulation is a final settlement of the case.  
 225 This cause and the motion to dismiss will stand continued in this court pending the receipt of the report from said district Court."

Now the stipulation is as follows:

"It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice this 5<sup>th</sup> day of July, 1918.

"And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit."

(Signed)

GEORGE REDEAGLE.

*Plaintiff.*

PAUL A. EWERT,

*Defendant.*

"We, the undersigned, do hereby certify that we were present when the above stipulation for dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that the said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequences of his said actions."

(Signed)

J. C. AMMERMAN.

I. E. ENYERT.

226 Mr. Ammerman being Referee in Bankruptcy for the United States District Court for the Southwestern District of Missouri, and I. E. Enyert being a tenant of George Redeagle, who brought him to the office. Now I am not certain, Your Honor, just what the procedure is in this matter. I presume the investigation is to determine the circumstances under which that stipulation was taken and whether or not we are the plaintiffs in this matter and should first produce our evidence or whether the plaintiffs should.

The Court: I think that is immaterial in a proceeding like this as to which side puts their evidence on first.

Mr. Currey: Your Honor, I should like to have your indulgence long enough to make a statement, because I don't believe Your Honor would be willing to make the certificate asked for without

having full knowledge, at least the court would have to read the petition and the answer.

The Court: Proceed.

Mr. Currey: Now the case primarily the proposition on which the case was brought is that the acts of this defendant in dealing with this Quapaw Indian, having at the time restricted lands, and his land was restricted lands and sold under the supervision of the Secretary of the Interior, and bid in by this defendant in the name of Franklin Smith, and as between this defendant and Franklin Smith in the trial of the case—I mean Readeagle in the trial of the case there was direct conflict as to whether Readeagle had any knowledge that Franklin Smith was bidding for this defendant; that it was bid in at \$13.00 an acre. The land lies right in the heart of the rich mining district in Ottawa County, Oklahoma, and consists of one hundred acres. At the time that this land was bid in this de-

227 fendant was an Assistant Attorney General of the United States, under a commission issued by Wickersham I believe, was signed by Bonapart just about the time he resigned, I don't know which one signed the commission. The section of the statute on which the action was based primarily was Section 2078 Revised Statutes of the United States and which reads:

"No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of five thousand dollars, and shall be removed from his office."

The Court: Now what was the commission?

Mr. Currey: The commission is set out in the petition. I will read the petition to you. I don't want to be in the attitude of making statements as to what the trial judge thought except as is proclaimed by the record in the case.

Mr. Ewert: May it please the court: Now the trial court went into this.

Mr. Currey: Now I object to Mr. Ewert interrupting my statement.

Mr. Ewert: The trial court went into this and judgment was rendered against the plaintiffs and the case was dismissed. Now the sole thing before this court is this, whether or not there was any underhanded—

The Court: I will hear that statement.

Mr. Currey: I will say to your honor I have no disposition to fore-judge anybody in this matter any further than I know Your Honor would have to know in order to pass on this question. The commission was dated October 23, 1908, and reads:

228 "You are hereby appointed a Special Assistant to the Attorney General to assist in the institution and prosecution of suits to set aside deeds made to certain allotments in the Quapaw Indian Agency. Your compensation will be at the rate of — per

month, commencing when you enter upon duty, at which time you should execute and forward the necessary oath of office. Your official residence is fixed at Miami, Oklahoma, and when absent from that place on official business you will be allowed your actual necessary expenses of lodging and subsistence, and your actual traveling expenses, as provided by the Department's orders dated September 1, 1907, a copy of which is herewith inclosed. This appointment is subject to any change which may be made by this department."

The instrument showed \$200.00 a month I believe. Now a petition was filed charging in substance that while the defendant was such assistant attorney general under this appointment, setting out the appointment, that he had charge of and brought a great many suits in Ottawa County, Oklahoma, for the purpose of setting aside leases and conveyances made by these various Indians, and obtained thereby an influence over these Indians, and that he procured Franklin Smith at the time this land was to be sold through the department to purchase the property, bid it in for him, and make a deed for it, have the deed made to Franklin Smith and subsequently some time about a year and a half afterwards the deed of Franklin Smith was made to this defendant. As I say based primarily on this statute the case came on regularly for trial at Vinita. There was also a companion case known as Bluejacket vs. Ewert in which the heirs of Bluejacket brought a similar suit. In the trial 229 of the case the defendant introduced evidence, statements under oath that he had consulted the Attorney General of the United States, and that the Attorney General of the United States, legal department, and also the Secretary of the Interior and his assistants had full knowledge that he was purchasing these lands. Now the case was submitted on the testimony of the defendant and Mr. Ewert and some witnesses introduced by the plaintiff, and Judge Campbell intimated at the close of the case that under the circumstances he would hold that he was not precluded from making the purchase and would find for the defendant. Whereupon we asked leave to file a brief. And subsequently discovering through the department sent down to Washington and had certified copies made of correspondence between the defendant both legal department and the Secretary of the Interior's office. Then prepared an amended petition and presented the amended petition, together with an application to the court to set aside the order of submission and permit the plaintiff to introduce testimony in support of the amended petition. This motion was denied and upon this trial—not upon the motion as the gentleman suggests—the court found for the defendant. The amended petition now and the petition and the evidence. I think there is a copy of the evidence here. I think the court would have to read that probably to understand how the whole matter came about. Shortly after this case had been determined, I believe probably before, anyhow a short time before or afterwards, Mr. Thompson went to Washington City and was there all through



the year. This plaintiff Redeagle as I say was an Indian living in Ottawa County, a full blood Indian, and after the finding the plaintiff did not immediately take an appeal. The matter went  
230 along till within a short time before the expiration of the six months. However we simply notified the plaintiff that we would appeal this case to the court of appeals for him and take their judgment. While Mr. Thompson was away Mr. Ewert made this settlement. Now I live and have my office in Joplin. Mr. Ewert has his office in Joplin. There is a block and a half distance between the two offices. But I had never seen Mr. Redeagle but the one time at the time we tried the case in Vinita and he had my name as McCleary. This settlement was made and then these papers were filed in this office. When the time was drawing near to take the appeal I came to this court myself and the clerk called my attention to the fact that there was this statement of a settlement on record in this court. I read the paper. The time being short I simply prepared the application for appeal, presented it to Judge Campbell and prepared the bond and the case went to the court of appeals. Motion was filed to dismiss the case and Mr. Thompson was present. The circuit court of appeals certified it back with the request of this court to find the facts and circumstances surrounding the making of this settlement. Now the evidence will be as shown by the letters of the defendant himself that he was advising the plaintiff to keep away from his counsel; that a short time before this settlement he had written the Indian and told him that his time had almost if it had not expired, and I think the record will convince Your Honor that he had convinced this Indian that his attorneys had abandoned it. And the evidence will further show in the case that this Indian for a considerable length of time prior to the time  
231 of this settlement had become a very hard drinker. His wife had died; I think he had been married twice, and he had been drinking very hard, and I think the evidence will also show taking dope. He was hauled to Joplin from Baxter, or a point about I judge two miles and a half probably south of Baxter, the distance from Baxter to Joplin is about twenty miles; he was hauled there in an automobile by a witness and paid \$100.00. He was taken up to Mr. Ewert's office. He went immediately from Mr. Ewert's office across the street and got into a debauch and married a woman. He continued practically from day to day drunk after that time until his money was all exhausted and finally wound up by getting burned up in a drunken debauch in some house there in the City of Joplin and died some time in November. Now as I say unless the court understands the nature of the case, which you probably will do by reading the papers, reading the pleadings, after the matter has been presented on the evidence. Now we do not regard the statement filed here as being a dismissal. No order of the judge was asked, although it had been on file a long time, and no information had been conveyed in any way to the Indian's attorneys. We took from the Indian at the time under the supervision of Mr. Hicks whom he had employed to look after his affairs. A short time after this he made a written power of attorney to a couple of



young fellows giving them one-fourth of all the income from his restricted property to look after his property, and he made an affidavit of the circumstances, but he is dead and the affidavit is on file in the Indian Department, under these circumstances that at the time of making this settlement, probably a day before or day after, and may be concurrent with it, I don't remember the date, he took a deed from the Indian on this restricted land.

232 The Court: Who took the deed?

Mr. Currey: Mr. Ewert, and sent that to the department with a request to have it approved. When we discovered the situation of affairs we took this affidavit and filed it with the department that they might understand the situation and the deed has not been approved. Now as far as the order of the testimony is concerned I don't care about that; I will proceed if the court says so or let the defendant proceed.

Mr. Ewert: May it please the Court: Rather than have the court have any misunderstanding I beg leave to make this statement in reply to his statement. The facts are, and the testimony will show to your honor, and the record will show, that they filed this petition in this suit and coincident therewith another entitled *Bluejacket v. Ewert*. These lands were advertised eleven years ago. In connection with the pleadings in this case the court should also read the testimony, because the pleadings allege things that are infamous and false and libelous. For instance those pleadings allege that during the time I was employed as special counsel, and by the way I was employed to prosecute certain suits and the testimony shows that, nothing whatever to do with Indians. They said that this Indian was hard up, in their petition, and that I induced the Indian to put this land up for sale through the channels of the United States Government and he was hard up and got in some trouble and so I got him to put up this land. Now of course being as careful as lawyers should be they would have known it was false and must have known it was false and the testimony shows  
233 it was false. In fact they never put a witness on the stand to prove anything of that sort at all.

Mr. Currey: Mr. Ewert, the court excluded that evidence.

Mr. Ewert: Exactly. And the testimony further shows that all this happened months and months before I was ever appointed to the position; and it further shows, the testimony in both of these cases together, that I never saw the Indians; never had a conversation with them, but saw posted in the post office a copy of Indian lands posted for sale and was the highest bidder after it had been up for sale a number of times, and the government appraisement was far lower than my bids. So the court wouldn't be prejudiced with that statement, and the only thing I did was to bid in these lands one in my own name, both at the same time, and the other in the name of a friend of mine as my trustee. And the testimony shows before those deeds were approved, and there is a letter on file in the testimony here somewhere that the Attorney General of the United States said there was no reason why I shouldn't bid on those lands, and recommended that the deed be approved and the Sec-

retary of the Interior did the same thing. Three Attorney Generals and two Secretaries of the Interior passed on it. Further the fact that Mr. Currey's office may be a block from mine in the City of Joplin doesn't make him any nearer than though he was a hundred miles; Mr. Currey and I haven't been on speaking terms for years and he knows that. Now the testimony will show that at the time this stipulation to dismiss was taken there was also taken a quit-claim deed and that the quit-claim deed was sent to the department and the department again held for the third time  
 234 that it had passed this right to this land at the time of the prior sale, and all this happened before this affidavit he spoke of which he filed with the department and of course is no part of this suit.

The Court: How far was this 100 acres of land located from the developed mining land?

Mr. Ewert: That was eleven years ago, Judge, and of course there were mining fields in Joplin twenty miles away and a mining camp at Hockerville, and these lands at that time lay within a mile and a half of the Kansas State line. The government's appraisement was made years before I came to the country and I think was twelve dollars an acre, it was rough hilly land.

Mr. Currey: I don't want to be understood as asking the court to pass on the evidence but I want him to read it. I only call attention to these things in reference to the rights of this man to have his case reviewed.

The Court: That is true but he had a right, if he was a competent person, to contract, to have stipulated that it be not tried in the trial court. We will proceed now; it is immaterial to me which side proceeds first. I am a little inclined to think though—I will let those representing George Redeagle's estate put their evidence on first.

Mr. Ewert: Have you the original order from the court of appeals?

The Court: Yes, I have that.

Mr. Currey: Now Your Honor, before calling oral testimony I want to offer in evidence—the defendant served notice, which came to my hands this morning, sent to the office on Saturday and the stenographer brought it to me; 1st served notice to produce  
 235 the original of that certain letter dated July 2, 1918, addressed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, dealing with the contemplated settlement of the suit of Redeagle v. Ewert, dismissed by Judge Campbell. Of course it was not dismissed by Judge Campbell. The letter called for we ask the stenographer to mark Plaintiff's Exhibit #1.

We will also ask the stenographer to mark letter of July 1, 1918, from Mr. Ewert to George Redeagle Plaintiff's Exhibit #2.

Now letter dated August 1, 1916, addressed to George Redeagle from Paul A. Ewert, Plaintiff's Exhibit #3.

These are letters called for and we ask counsel to examine them.

Mr. Ewert: I find, Mr. Currey, only two letters asked for in the notice to produce. I take it if you have any of the original letters

asked for you will present them. I would like to file at this time the notice to produce as served upon counsel the originals of certain letters, and ask to have it marked Defendant's Exhibit #1.

The Court: They have been identified in evidence there.

Mr. Currey: We are asking the stenographer to identify as Plaintiff's Exhibit #4 letter dated July 3, 1918, addressed to George Redeagle and signed by Paul A. Ewert, with copy attached.

Letter consisting of two sheets dated September 2, 1918, addressed to George Redeagle and signed Paul A. Ewert, as Defendant's Exhibit #5.

Letter dated January 17, 1917, addressed to Julia Crow Redeagle and signed P. A. Ewert, as defendant's Exhibit #6.

Now if the court please we offer all of these exhibits from #1 to #6, inclusive, in evidence.

Mr. Ewert: Defendant has no objection to the introduction of Plaintiff's Exhibits #1 and #2. But object- to the introduction of Exhibit #3 on the ground that the same is incompetent, irrelevant and immaterial and does not concern the subject matter here under investigation, entirely another matter.

The Court: This will be transcribed and I will pass on it.

Mr. Ewert: No objection to the introduction of Plaintiff's Exhibit #4; no objection to Plaintiff's Exhibit #5, nor Plaintiff's Exhibit #6, except that it has no relevancy to this transaction whatever; it is incompetent, irrelevant and immaterial not connected with the subject matter under investigation.

Mr. Currey: I suppose the court wants these letters read.

The Court: Let them all go in and have them transcribed and I will read the record at one time.

Mr. Currey: I would like to read these letters before introducing oral evidence. I will commence the letters by dates if I can.

Mr. Ewert: Some of those letters antedate this transaction for years.

The Court: Very well, this is not tried before a jury.

(And thereupon Mr. Currey read the exhibits to the court.)

237 And thereupon Mrs. A. LOUCKS, produced, sworn, and examined as a witness for and on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Currey:

Q. State your name.

A. My name is Mrs. A. Loucks.

Q. Where do you reside?

A. Promenade, Oklahoma.

Q. That is in what county?

A. Ottawa County.

Q. How long have you resided in Ottawa County?

A. One year the 11th day of last October.

Q. Were you acquainted with George Redeagle in his life time?

A. Yes, sir.

Q. Did you ever stay at his house?

A. Yes, sir.

Q. When?

A. Last June.

Q. What did you do there?

A. Doing house work.

Q. For Mr. Redeagle?

A. Cooking for him.

Q. And at that time his son and wife were there?

A. Leroy and his wife.

Q. Are you acquainted with Mr. Ewert here?

A. I have met the gentleman yes, sir.

Q. Did you meet him at the Redeagle place?

A. Yes, sir.

Q. I wish you would tell the court, the Judge there, about meeting him and what was done, you said you met him in June?

A. The last week in June.

Q. Go ahead.

A. The gentleman came to the door. I answered the door and he asked me if George Redeagle lived there. I told him he did, he was there, and he asked me if he was about the place. I told him no. He asked me if I was his wife. I said no, sir. He said, "What are you doing here?" I said, I am working here for his son Le Roy.

He put his foot in the door and looked in and around to see  
238 if he was there I suppose. He said, "Well, I want you to

bring him to Joplin on Friday morning and get him there by nine o'clock and see that he don't have anything to drink." I says, I cannot do that because I am working for Mr. George Redeagle." Well he says, "You can bring him up there anyhow can't you?" I said, no. He said, "Well see if you can't get him up there by nine o'clock and have no drink in him." I said, no; and he smiled and as he stepped out of the door the gentleman looked at me pleasant and stepped from the door and as he left I suppose winked one eye and says, "Now try and have him up there." I says, I will tell him. He gave me his card and says, "I am a lawyer." I put the card in the desk. When Mr. Redeagle came in I took the card to him. Now that is all I know.

Q. Was he there more than one time?

A. Not to my knowledge.

Q. Do you remember what time of day it was he was there?

A. About two o'clock in the afternoon.

Q. How long did you stay there at that house?

A. Eight days.

Q. And was Mr. Redeagle about at the time?

A. Yes, sir.

Q. What do you know about his condition with reference to drinking or otherwise?

Mr. Ewert: Obejected to as incompetent, irrelevant and immaterial.

A. Well what do you mean his physical condition?

Q. Mental.

The Court: Now this was what year?

Mr. Currey: That was in June, 1918.

A. Was his physical condition or mental condition?

Q. His mental condition.

Mr. Ewert: That is incompetent, irrelevant and immaterial; no foundation laid.

239 Mr. Currey: I want her to narrate what he did, from which I understand non-expert witnesses may express their opinion.

Mr. Ewert: Same objection.

Q. Did you have any acquaintance with him before you went there?

A. No, sir.

Q. Did you have any acquaintance after you left?

A. No, sir.

Q. During the time you was there was he around the place most of the time?

A. Yes, sir, every day.

Q. During that time do you know what his condition was as to whether being drunk or sober?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: I believe she testified that was the last week in June.

A. There was only one condition of him I didn't like and that was when he became under the influence of this Peyote medicine he drank; that disarranged his mentality entirely.

Q. What was that stuff?

Mr. Ewert: That is objected to as incompetent.

A. Something the Indians had.

Q. How do you know there was any of it there?

A. I saw it.

Q. Well how was it put up, describe it?

A. How was it put up?

Q. Yes, is it a liquid?

A. No they boil it sometimes and make a liquid and sometimes they chew it.

Q. Is that the same stuff that the Osage Indians use if you know?

A. Yes, sir.

Mr. Ewert: That is incompetent.

A. Yes, sir.

240 The Court: Did you ever live among the Osages?

A. No, sir.

The Court: How do you know?

A. Because I have met them.

Mr. Ewert: Move that the answer be stricken out, no foundation laid.

Q. How do you know that he ate that stuff?

A. Because I saw him one day.

The Court: How many times did you see him eat that?

A. Once.

The Court: Only once?

A. Yes, sir.

Q. You were there eight days?

A. Yes, sir.

Mr. Currey: That is all.

Mr. Ewert: That is all, thank you.

Mr. Currey: What effect did it have on his condition, that is what did he do after that?

A. He becomes very stupid in everything and seems as though just simply his mind was troubled, as though there was no sense to him at all.

The Court: That was after he chewed that Peyote?

A. Yes, sir.

The Court: And you only saw him do that once?

A. Yes, sir.

Mr. Currey: That is all.

Mr. Ewert: That is all.

(Witness dismissed.)

And thereupon A. E. WALLACE, produced, sworn and examined as a witness for and on behalf of the plaintiff testified as follows:

241

Direct examination.

By Mr. Currey:

Q. State your name.

A. A. E. Wallace.

Q. And where do you reside?

A. Ottawa County, Oklahoma.

Q. How long have you resided in Ottawa County, Oklahoma?

A. About a year and nine months.

Q. Where did you reside last June and July, June and July 1918?

A. At the Redeagle farm.

Q. Was you on the farm?

A. I was on the farm, yes, sir.

Q. State whether or not you slept at the Redeagle house.

A. Yes, sir.

Q. What Redeagle, George?

A. Why Le Roy had the place, George stayed there.

Q. You know the George Redeagle we are talking about?

A. Yes, sir.

Q. That died up at Joplin along in November or December; that is the Redeagle you refer to?

A. Yes, sir.

Q. How long did you know Mr. Redeagle?

A. I knew him about ten year-.

Q. State how well you have known him, whether you have been intimately associated with him.

A. Yes, sir, quite a good deal.

Q. Now were you living there or staying there on that place at the time of his marriage to this last woman?

A. Well—

Mr. Ewert: That is objected to on the ground that it must be admitted that this last woman was married to George Redeagle after the taking of this stipulation.

Mr. Currey: Yes, two or three hours.

Mr. Ewert: No, on the 11th day of July and this was on the 5th you recall.

Mr. Currey: We will show.

242 The Court: Well go ahead; I will see what it is.

Q. Go ahead.

A. I wasn't there when he was married.

Q. Well do you remember the occasion of his making the settlement with Mr. Ewert, were you there at that time or hear of that?

A. Yes I were there after he claimed he had made the settlement.

The Court: How long afterwards?

A. He made the settlement somewhere between the 4th and about the 9th I guess. It was on Monday I think.

The Court: How long was it before you saw him after he made the settlement?

A. Well he didn't tell me just what day he made the settlement. The last time I seen George I seen him on Thursday on the 3rd and he and I went to Joplin and I came back Sunday evening from Joplin and I seen George either Monday evening or Tuesday morning I won't be positive which, either Monday evening or Tuesday morning.

Q. Now how long were you there at that place and knew George prior to the first of July?

A. Well I had been on that place. I worked on that place for the Blue Bonnet Mining Company for a year, batched there on the ground me and another fellow and seen him most every day.

Q. During that time did you see George Redeagle frequently and associate with him?

A. Yes, sir.

Q. Around about the first of July did you see him and talk with him?

A. About the first yes, sir.



Q. Now describe if you can, avoiding giving your own conclusions, describe what his condition was with reference to being drunk that you know of, describe with what frequency he used it.

A. Well he used a drug, some kind of a drug that grows  
243 they claim, I have seen it they call it Peyote whatever the name is.

Q. Tell the court whether or not you know of him using that and how you know it?

A. Well some time he would eat it raw just like you would a radish, and some times he would make tea out of it so they tell me. I never saw him drink any but I saw him eat it raw.

Q. Did you ever see him eat it?

A. Yes, sir.

Q. Now what would be his condition after he would eat it?

A. Well it makes him stupid and his eyes would turn kind of green, seemed so to me. I told him it was killing him.

Q. What effect would it have on the coherency or incoherency of his talk?

A. Well it had a tendency some times to make him stop his speech in a way. If you was talking to him he would change his conversation; I have noticed him several times.

Q. Now during that time for a year or such his physical and mental condition describe his condition as near as you could.

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, no foundation laid.

The Court: I don't think he is competent to testify as to mental condition.

Mr. Currey: I am not calling for his opinion, but I am asking him to testify from his observation, to tell what he would do.

Q. Do you remember and can you describe his behavior for a year and at various times?

A. He would drink considerable and he would have a good deal of trouble amongst his own people, but I never knew him having much trouble with outside people until after he was married the last time.

Q. Did you talk with him?

A. Yes, sir, quite often.

Q. Do you remember his conversations?

A. Why some of them I do yes.

244 Q. Can you narrate conversations you had with him; you say at times he would appear stupid, do you remember conversations you had with him at the time?

Mr. Ewert: That is objected to as leading and suggestive in the extreme.

The Court: Yes.

A. Why as I tell you he would start out and tell you anything and he would change off on some other conversation.

Q. How often would that occur?

A. Well quite often.

Q. How about matters of that kind along about the first of July, 1918?

A. Well he was filled up on that medicine so he claimed to me when he came home he had been down to Hominy, Oklahoma.

Mr. Ewert: Now we object to that as hearsay and move it be stricken out.

The Court: Yes, that is not competent. When did he come home from Hominy?

A. He was fleshened up and I told him——

### Examination.

By the Court:

Q. When was that he came from Hominy?

A. He must have got home along about the——somewhere between the twentieth and twenty-fifth of June I think it was.

### Examination.

By Mr. Currey:

Q. That he came home from——

A. Hominy.

Q. Now what was his condition when he got home?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial.

The Court: He may state what his physical condition was and what he said and what he did, but not what he thought about it. He is not competent to testify as to his mental condition.

A. Well he got to drinking very heavy; he came home and he just kept on drinking up to the time he got burned up, that is every week or two he would be drunk.

The Court: Do you know the day he went to Joplin?

A. Only what he said.

The Court: Did you see him that day?

A. I never seen him on the 4th of July. The last time I saw him was the 3rd.

The Court: Do you know whether he was sober when he started?

A. I don't know his condition on the 4th, no, sir.

Q. Did you see him any time after the 1st of July?

A. Yes, sir, I was with him on the 3rd of July.

Q. What was his habit as to regular drinking?

Mr. Ewert: I object to that, incompetent, irrelevant and immaterial.

The Court: I don't think that is material.

Q. State whether or not you saw him take drinks?

A. Yes, sir.

Q. Were you ever there in Joplin with him?

A. Yes, sir.

Q. What happened to you and him when you were up there?

A. Nothing happened to us only drinking.

Q. Did he get whisky?

A. Yes.

Q. You know a man when he is drunk when you see him don't you?

A. Yes.

Q. What do you say about him being drunk?

A. He was pretty drunk.

The Court: When was that?

A. On the 3rd day of July.

The Court: Did you leave him in Joplin?

A. No, sir, I think he came home on the night of the 3rd  
246 and I stayed up there.

Q. Then did he come back to Joplin?

A. He told me he came back the 4th but I never seen him.

The Court: You saw him the 3rd; now when did you see him the next time?

A. On Monday, the following Monday.

The Court: What day of the month was that; what day did the 3rd come on?

A. The 3rd was Tuesday and the 4th was on Wednesday.

The Court: The next time you saw him was on the 9th.

Q. About how many times have you seen him take that dope that you speak of?

A. I have seen him eat that several times.

Q. Running over a period of how long?

A. Well whenever I would be passing around the house.

Q. Were you there pretty constantly?

The Court: Mr. Currey, are you attempting to show he was drunk and incapacitated on account of being drunk when he signed this contract, or are you taking the burden on yourself to show he was such a dope fiend he wasn't qualified to transact business for himself.

Mr. Currey: I propose to show both.

The Court: Very well, go ahead.

Q. Now I want to find out how much you were with George, what occasion you had to see him?

A. I stayed right there at the house with his son Le Roy.

Q. Now about how often did you see him take it fifteen or twenty days before and subsequent to the first of July, 1918?

A. I think it was along the 20th or 25th he came home.

The Court: How long had he been gone up to Hominy?

A. Well he went up there in April; then he came home  
247 and went back and the last time I think he was gone about four weeks.

The Court: So you hadn't seen him from April to the 20th of June?

A. Well he had came home once during the time.

The Court: How long was that?

A. He only stayed a couple of days.

Mr. Ewert: Now I move, Your Honor, that the testimony of this witness with respect to this man's condition and what he saw and observed, be stricken out as being too remote.

The Court: They may try to follow this with other evidence. I will let it stay for the present.

Q. What did Redeagle do, what employment?

Mr. Ewert: That is incompetent, irrelevant and immaterial, leading.

A. He didn't do anything.

The Court: Didn't he ever work?

A. Very little.

Q. Do you know whether he was a full blood Indian?

A. Only what he claimed.

The Court: Well did he have the appearance of a full blood?

A. Yes, sir.

The Court: A Quapaw?

A. Yes, sir.

Q. How long have you been acquainted with Indians and Indian life?

A. I have been acquainted with Indians about thirty years.

Q. Lived among them?

A. Off and on.

Q. Have you lived among the Quapaws and familiar with the Quapaw habits of life?

A. Well I couldn't say I am acquainted with the habits of their life only for about the last year and eight months I have been amongst that Quapaw Tribe; but I have known Quapaws and dealt with some of them for eight or nine years.

248 Q. From your observation of this man what do you say about whether he was a full blood Indian or not?

Mr. Ewert: We will admit he was a full blood Quapaw Indian.

The Court: There is no controversy about that, no need to prove that.

Q. Now I would like for you to state if you will approximately how often you had conversation with him along about the first of July; can't you recall a particular conversation that you had about the first of July?

A. On the first of July we talked every day most. I was staying right there, and at meal hours I would see him and after supper hours. I believe it was on the second day of July he had come home from Joplin, he had been to Joplin and come back, had been drunk, then on the third we went to Joplin he and I.

Q. And then he got drunk again?

A. Yes, he got pretty drunk.

Q. From your observation and conversation with Mr. Redeagle and your association with him what do you say—what is your opinion as to whether or not he was competent to transact business any time along about the first of July, or any where from the 5th of July for a month for instance?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial as the witness testified he was gone from April and he didn't see him.

Mr. Currey: If the court please, as I understand the rule of non-expert witnesses who testify, give their opinion that in offering the testimony you have only to go far enough to show the conversation that he has had with him.

The Court: He just shows he was drunk, that is all. One time he noticed him—I believe you said when he came back from  
249 Hominy one time you saw him eating that Peyote?

A. Yes.

The Court: He only testified one time.

Q. How many times?

Mr. Currey: I didn't understand him to say that.

A. I said I see him eating it two or three different times, probably more than that.

The Court: Two or three different times, when?

A. Several times.

Q. Well approximately when?

Examination.

By the Court:

Q. After he came back from Hominy you say he went there in April and then he came back and stayed two days, and then he went back, did you see him eating those two days?

A. No, I don't believe I did.

Q. Was he drunk then?

A. No.

Q. Then he went back and stayed about a month and come back about June 20th and he was there up to the time that you went to Joplin with him on July 3rd and you didn't see him until the 9th?

A. No, sir.

Q. From the time he came back from Hominy the last time or June 20th how many times did you see him eat or chew this Peyote up to the time you went to Joplin with him on July 3rd?

A. I couldn't say as to that, couple.

Q. Did you see him as many as three times?

A. I seen him two or three times to the best of my knowledge.

Q. You won't say over three times. How many times did you see him drunk between June 20th and July 3rd when he went to Joplin?

A. Well I seen him intoxicated I think about three times.

The Court: I don't think he is competent to testify.

Examination.

By Mr. Currey:

Q. How long would thesesprees last?

A. Well some times he would go to Joplin and be gone one day, some times he would get liquor at Pitcher and bring it home. When he had whisky he would drink it.

Q. Do you know whether he generally had whisky about the house?

Mr. Ewert: That is objected to as leading.

A. Some times he had.

The Court: He didn't keep it there because he drank it didn't he?

Q. Well now have you had any experience with the Indians that use this Peyote, or whatever you call it? Do you know what effect it has? State whether or not you know what effect it has on the appearance of the Indians that use it?

Mr. Ewert: That is objected to as incompetent.

The Court: I don't think that is competent.

Mr. Ewert: The effect generally of Peyote.

A. That would be only just hearsay.

Q. Well from your actual observation is what I am asking you.

Mr. Ewert: Same objection.

The Court: Well if he has seen him take it.

A. I know what they say.

Mr. Ewert: Move it be stricken out.

Q. I understood you to say awhile ago that Ewert—I mean Readeagle came back that there was something in his face that indicated he had been using that?

A. He was awfully fleshy. I told him they must have been giving him plenty to eat down there.

Q. What was it you said if anything in regard to that indicating his condition, fleshy condition indicating the eating of this stuff?

Mr. Ewert: That is objected to; he hasn't said.

The Court: How did he look when he came back; did he look well?

A. He was fleshy.

The Court: Did he look like the trip had helped him physically?

A. He looked fleshy; his eyes were rather green.

Q. If you know what did that indicate?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, entirely hearsay.

The Court: Just prove how he looked and what he saw by this witness. You can't construe a man's mental condition except by competent witnesses.

Q. Have you ever had any association with Indians that you knew used this Peyote, or whatever it is?

Mr. Ewert: Objected to on the ground that the witness testified he never had.

The Court: Let him answer.

Q. What is your answer?

A. No, sir, not that I know of.

Q. How old a man was this man Redeagle?

A. Claimed to be about fifty-three year old I think.

Q. About fifty-three years old. And you say you had known him for about how long?

A. About ten years.

Q. About ten years?

A. Yes, sir.

Q. Can you describe if there was any difference what was the difference between his appearance and his condition when you first knew him and at the period when you are speaking of now?

A. Well when I first knew him——

Mr. Ewert: That is incompetent by reason of the fact that he has testified he only knew him to drink during that  
252 short period.

The Court: He can answer that.

Mr. Ewert: The general decay in a man in ten years.

The Court: What did you see?

A. I could just judge by his general appearance.

The Court: Well he was a young man when you first knew him?

A. Yes, sir.

The Court: What did he do then?

A. I didn't know so much about his condition. I saw him in Miami and got acquainted with him.

The Court: Did he drink then?

A. Yes, sir.

The Court: Never saw him chew up this Peyote in those days?

A. No, sir.

Q. When was it when you first saw him chew up this Peyote?

A. Well, I never see him use any of it until he came back from Hominy, to my knowledge the first I ever see him use it.

Q. Now what was, if anything, the change in his condition as exhibited by his personal condition between the two periods that I have asked you about?

Mr. Ewert: That is objected to, your Honor.

The Court: What was his physical appearance?

A. There was a great deal — difference in his appearance, of course as the court said he was much younger then, he would be ten years



anger, and his drinking faculties why probably had a tendency to destroy his health in a way.

Q. What was the difference in his conversation as to whether his conversation was consecutive, whether he talked systematically the same when you knew him the last time as at first, in regard to talking coherently or incoherently what was his condition?

A. His mind fluctuated faster, as I said he seemed changed, he would jump from one thing to another.

The Court: That would be when he was drunk?

A. Yes, sir.

The Court: Now when he wasn't drunk did he talk rationally?

A. He talked rationally to me.

The Court: When he was drunk he wasn't rational. Well that is the way with an ordinary drunk man.

Q. Mr. Wallace were you at Redeagle's house when he came back from Joplin the time he made this so-called settlement?

A. I don't know whether he had been back before I came home or not but I don't think he had.

Q. What time of day or night did he come to the house?

A. In the night.

Q. About what time in the night?

The Court: Now Mr. Currey here is the way I understand the testimony: This stipulation is dated July 5th; he testified that he went to Joplin with this man on July 3rd and got drunk and he never saw him any more until July 9th.

A. The following Monday.

The Court: July 3rd was on Tuesday and it would be Thursday this assignment was taken; he was drunk on Tuesday and he never saw him until Monday night.

Q. What was his condition then and what did he say to you about the settlement and what did he say had been done with the money?

Mr. Ewert: We object to that as purely hearsay.

The Court: That is not competent. You can prove by him when he saw him Monday night he was drunk and his appearance, but now as to what he said and what he had been doing you certainly can't prove that.

Mr. Currey: Prove it for the purpose of showing his mental condition, entitled to prove the declarations that the man made. That is the reason I have been trying to get him to recite the conversation. You can prove the conversation a man has had just after the transaction and subsequent.

The Court: That would be a self serving declaration.

Mr. Currey: Not if you are attacking it.

The Court: Prove what he had done about that contract and what he had done with the money?

Mr. Currey: It is not offered for the purpose of showing what he did with the money.

The Court: He swears he was drunk on Monday night. I think that is far enough to go under the rules. The next time he saw him he was drunk.

Mr. Currey: I want to suggest to Your Honor I can't see why the rule wouldn't be the same. If we are going to contest—the contest of a will for instance, now you can show that that man a day or two before that, or a day or two subsequent to making his will, that he purchased a horse worth \$100.00 and paid \$400.00; or you can show that he made a gift to a complete stranger.

The Court: But you wouldn't prove that always by the declarations or anything like that.

Mr. Currey: You didn't wait until I finished. You can prove that the fellow had gone to town and deposited the money and that he said he had checked it all out; then you can introduce the check books that that was true.

Mr. Ewert: Introduce the proof that it was true.

The Court: Better get me the authorities on that.

255 Mr. Currey: I will have to get them.

The Court: We will take a recess until tomorrow morning at ten o'clock.

And thereupon court took a recess until April 8, 1919, at ten o'clock A. M.

And thereafter court reconvened at ten o'clock April 8, 1919, and the following proceedings were had:

The Court: What are you trying to prove?

Mr. Currey: In the first place the circumstances under which the was taken are such as to lead to presumptive fraud.

The Court: Why?

Mr. Currey: Because he goes out and takes this release advising the party not to consult with his attorneys.

The Court: Where is that?

Mr. Currey: It is in his letters.

The Court: Read the letters let's see.

Mr. Lyons: It says he won't settle with his attorneys.

The Court: You made the statement that he advised him not to consult with his attorneys, now I want to see that.

Mr. Currey: "I have instructed my clerk that under no circumstances should she have any dealings with you when you are intoxicated." That is in one.

The Court: I think that would be commendable.

Mr. Currey: If it wasn't for the fact that these letters show that they were written with the intention of building up proof to sustain a contract that he was undertaking to make.

256 The Court: Well let's see if you have any proof of that. Here is a man says he is fixing to go away for six weeks and that is a cloud on his title and he could develop his property and he wanted to get that cloud off and he would give him \$700.00 to get it off.

Mr. Currey: The property at that time was worth 150 or \$200,000.

The Court: That don't make any difference. I am inclined to think because he represented the Department this don't prevent him from buying that land.

Mr. Currey: Now take this letter—of course I am not submitting this solely on these letters—first the letter of January 3, 1918. "I send you a copy of the opinion rendered by the court in the case of Redeagle vs. Ewert. I do this, thinking perhaps your counsel may keep you in ignorance as to what the court held. You will remember that when you were down at Vinita the court held that you had no case. Thereupon, Currey wept bitterly and asked the privilege of filing brief and getting additional information. The court has again denied that and again sustained his prior opinion holding that you have no case."

The Court: Where is any misrepresentation, let's get that? Where has he misrepresented anything?

Mr. Currey: Well his reference to counsel in the case intended to gain the confidence just as much as if he had said "Your attorneys don't know what they are doing; your attorneys are bunco-steer-s," just as much when he was saying it to the Indian. It was not his business to interfere with the relation of attorney and client. "I have just returned from Muskogee, Oklahoma, and find that there is on record there an appeal bond in the case of Redeagle v. Ewert, which was signed, or appears to have been signed by you, appealing the case of Redeagle v. Ewert, and I cannot understand it. I have always believed that when you were sober you were a man of honor. You came to my office on a number of occasions and wanted to compromise the suit of Redeagle v. Ewert. I repeatedly told you that I would not compromise with your attorneys because of the feeling I had against them, and because of the fact that they induced you to bring this law suit against me, against your will. I told you that you could bring up any of your friends or neighbors, or any other attorney that you wanted, and I would make a settlement with you. You remember that I refused on one or two occasions to make a settlement with you because I thought you had been drinking. I told you I would not make any settlement with you when you had taken a drop of liquor."

The Court: That rather looks a little bit like laying a predicate. Mr. Currey: "I am leaving the city today to be gone for about six weeks but I have left a check for \$700.00, here in my office, together with the proper papers for you to sign." Now that absence was deliberately planned to be away from there.

The Court: What evidence have you to that effect?

Mr. Currey: I have the evidence in these letters themselves that that is not the character of a letter that the man is dealing fair. Now it is just like a fellow that makes a fraudulent conveyance when he calls his neighbors in to see he is fair. It was a confession that this man was so habitual a drunkard that he must find proof that he wasn't absolutely drunk at the time. I will find you authorities until you are tired of reading them on that proposition. "And may I suggest to you, that if you do make this settlement, that instead of having this check cashed and getting drunk and losing the money, that you go and deposit the check in some bank and check against it. In that way you won't be so liable to lose the money." Every one of these letters shows the conscious-

ness of the weakness of the man he was dealing with. "If you desire to make this settlement I suggest that you come to this office at an early date. You can bring with you whomsoever you please if they are reliable and sober persons. I have stated in my previous letters why I would not settle this case with your attorneys." Now in his previous letters he had first intimated to weaken the Indian's confidence in his attorneys—of course that is proof that comes very hard, rather it is hard to get; and then said, your attorneys lost the case here and it is just a cloud on my title. Is his title any more sacred than any other man's title? I have no doubt in my mind at all about the fact that the court erred in the assumption that the Department has any power either morally or legally to say to a government agent "You can purchase from the Indians."

Mr. Ewert: I never purchased from the Indians, never saw them.

Mr. Currey: The Circuit Court of Appeals says that the deal is with the Indians and the Secretary of the Interior simply exercises veto power.

The Court: This deed you are talking about where the land was sold there along in 1908 or 1909 some where I believe it was; now the Indian signed that deed?

Mr. Currey: Why of course the Indian signed the deed; 259 he had to.

The Court: Why?

Mr. Currey: Because he is the source from which the title came.

The Court: Why did he have to sign it?

Mr. Currey: Because it was the provision of the government for his making a conveyance and this court of appeals in 192 Federal in an opinion by Judge Hook said that the deal and the contract was with the Indian.

The Court: Why sure, but why did he have to sign it?

Mr. Currey: Because that was the only way he could convey.

The Court: But why did he have to convey?

Mr. Currey: I don't understand the court's observation.

The Court: He didn't have to sign unless he wanted to.

Mr. Currey: Why at the very time when the government's deal was made, and his habits go to show that this Indian was like many other Indians subject to any kind of influence that would get him a dollar. But had the deal been made as required by the law it would have been conclusive.

The Court: Why wasn't it made as required by law?

Mr. Currey: It wasn't because a purchaser purchased it who is forbidden by the statute.

The Court: He wasn't the Indian Agent or anything like that.

Mr. Currey: In the Douglass case the party wasn't an Indian Agent; it was solely because the woman was in the employ of the government teaching school out here in the Northwest. Now this case didn't go off on the ground that the statute didn't apply, 260 but it went off on the ground I assume—Judge Campbell never said enough to me to let me know what his views were—but it went off on the proposition that the Department had

authorized their agent to make the purchase. Whereas the Department itself, the very officers that he claims authorized him to do it, hadn't themselves any power either to authorize him to make the purchase or to make the purchase himself.

The Court: That is not here. You are going on the assumption that all is void made like that.

Mr. Currey: I am proceeding on the presumption that this contract is presumptive fraud even if Redeagle had been a white man, and I do that on the decisions of the courts where a man interfered between client and attorney. Now this letter of July 1st: "In order that there may be no misunderstanding or any mis-statements concerning the matter of the settlement between us of the case of George Redeagle v. Paul A. Ewert, involving the title to the 100 acre tract of land, I will say this: That Judge Campbell has rendered a decision in this case holding that you are not entitled to recover the land. This opinion was formally filed on the 4th day of March, 1918, although as you know, he stated when I was in his court six months before that time, what his decision would be, and in fact after that he wrote a formal letter to both counsel stating what his decision had been. This case has not been appealed, nor has any step been taken towards appealing it, and if the time is not already past, it soon will be, when an appeal can be taken. I want you to understand thoroughly what your rights are and just what you are doing."

Now he might as well have said to that Indian in plain English, "Your attorneys have abandoned your case and now out of the goodness of my heart I am going to make a settlement with you."

The Court: Let me see that letter. (Ptff. Ex. #2).

Mr. Currey: Couldn't make it any stronger and perhaps not as significant if he had said it in that many words. There were sixty days after my co-counsel called my attention to it to make the appeal.

The Court: What was the date of the judgment?

Mr. Currey: 4th of March.

The Court: Well, he had six months after that.

Mr. Currey: Had six months after that to appeal in.

The Court: "If you sign this stipulation for dismissal, that ends the case forever, and I am paying you this \$700.00 with the distinct understanding that it does end the case forever."

Mr. Currey: Yes, sir, warning him however. He had just as well said, "Your attorneys have abandoned you, you had better get this money." Now this letter of September 2nd; if we were attacking in this case between two white men to set aside a conveyance for fraud on these letters the authorities would abundantly support us on the ground that we are entitled to a decree. Now this letter of September second—

The Court: This is a case before me; I will be liberal and let you get it in. This is to go up to the Circuit Court of Appeals. I am acting as their agent. I will give you a chance to make your record.

Mr. Currey: I will state to your honor what my views are; I want to call your attention to these authorities because it now  
262 affects the method of putting in this testimony.

The Court: I understand I am virtually acting as a master of these witnesses is abundantly supported by the authorities and I think I am entitled to prove the declarations of this man going back as far as I can keep the declarations consecutive, even if that does not apply to this case, for the purpose of showing his mental status. (Reads from 99 Mass. Reports). Now as to the right to have these non-expert witness- give an opinion, and I stated the rule stronger for the defense than it exists, the only disagreement between the courts is to whether or not—some courts hold that the witness must testify to acts and statements made.

The Court: That is what Greenleaf holds I believe.

Mr. Currey: Yes, and then that he must base his opinion on those he testified to. While the weight of authority is that if the party testifies that he knew the party involved; that he was associated with him sufficient for him to understand his habits of thought and workings of his mind he may testify, even though he is not able to testify to those facts. Here is the case of Atwood v. —, a Connecticut Case, 79 Atlantic, 59 (reads):

The Court: That is a fact; that is testifying as to a fact.

Mr. Currey: We will come to that just in a minute. I am not going to offer your honor any cases that are not discussing the things I am talking about. (Reads.)

The Court: Put your witness on and ask the question.

Mr. Currey: We hand your honor a memorandum there  
263 on the same questions with the quotations.

And thereupon A. E. WALLACE was recalled for further examination and testified as follows:

Direct examination.

By Mr. Currey:

Q. Looking at the calendar for 1918 I see that the 4th of July came on Thursday. We had it yesterday or Wednesday—

The Court: You may show him the calendar for the purpose of refreshing his memory.

Q. Mr. Wallace, I wish you would look at this calendar, which seems to be a calendar for 1918, and tell the court what day of the week the 4th of July came on in 1918.

The Court: He testified he saw him on Tuesday; that would be on the 2nd day of July instead of the 3rd day of July.

Mr. Lyons: I think, Your Honor, that was on the assumption that the 4th of July was on Monday.

The Court: I take it that the witness remembers the day of the



week better than the day of the month. He testified it was on Tuesday.

Mr. Currey: After Mr. Thompson calls my attention I understood the witness to say he went up there on the 3rd.

The Court: He testified that he went to Joplin with him on Tuesday and he said that was on the 3rd day of July and that he never saw him any more until the next Monday, and I figured it up with him myself, counted it on my fingers and made that the 9th day of July is the way I remember it.

Mr. Thompson: I think it is fixed in the witness' mind.

The Court: He is your witness and he fixed these dates and you are not changing his testimony; I heard the evidence.

264 Mr. Currey: I desire to suggest the 4th of July and Joplin is a day that isn't forgotten and this witness testified he went up there on the 3rd on Tuesday and stayed over——

The Court: He didn't know. He said he never saw him any more until the next Monday. I am the trier of the facts here and I heard that evidence and he said that he went with him on Tuesday to Joplin and that that was the 3rd of July and that he never saw him on the 4th of July; he didn't say whether it would be Wednesday or not, and the next time he saw him was on the next Monday. You may proceed.

Q. Now after you was in Joplin and came back and after Mr. Red-eagle came back you may state what if any conversation you had with him and what if any statements he made.

Mr. Ewert: That is objected to, incompetent, irrelevant and immaterial, no foundation laid.

The Court: Well now first fix the time when he saw him.

Q. When did you see Mr. Redeagle next after you went to Joplin with him?

A. It was on Monday night, the following Monday night.

Q. Where was it?

A. At his home.

The Court: Who was present?

A. Why there were no one there except he and I and Miss Loucks and he came in on the side room.

Q. What was his condition when he came there?

A. Well he seemd to be a drinking and he didn't have much to say that night. I didn't have no conversation with him at all that night to speak of.

265 Q. When did you see him next?

A. I left him the next morning.

Q. Did you talk with him the next morning?

A. No, sir.

Q. Well when did you talk to him?

A. That evening.

Q. Where at?

A. At his home.

Q. What was the occasion of your talking?



A. I was going by, by the porch and he spoke to me and I asked how he was feeling, and he said he felt pretty tough. I says, pretty drunk last night, and he says yes.

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, hearsay.

The Court: I think that is all right. He said he saw him that night and saw him drunk.

Mr. Ewert: Exception.

The Court: I think that is competent as to why he knows a man was drunk.

Q. State all the conversation you had with him, what he said.

A. Well I spoke to him about being pretty drunk last night; "Yes, pretty drunk." I says, where was you at all last week; I says, I never saw you in Joplin after I left you.

The Court: I don't think that is competent.

Mr. Currey: I am trying to show the statements that Redeagle made to him.

The Court: Well I will not permit him to tell where he was all the week before; that might be prejudicial in this case.

Mr. Currey: The question is offered for the sole purpose of getting the statements made by the witness—to get statements made by Redeagle to be followed by asking the witness his opportunity or his ability to make transactions and the condition of his mind.

266 The Court: If telling where he was the week before had any bearing on a man's mental condition I would permit that, but I don't understand that the recital of where a man has been the week before could throw any light on a man's mental capacity.

Mr. Currey: If the court please I am not offering that. The statement he makes is not evidence of course.

The Court: No, I will not permit you to prove by him where he said he was the week before and you can have an exception on that.

Mr. Currey: All right. I don't understand the exception does the court any good because the—

The Court: You can take this record up. I will allow you to take that record up.

Mr. Currey: We take an exception.

The Court: I will let you prove any statement he made that had a tendency to show the man's mental condition.

Mr. Currey: I think this—

The Court: Well you have a ruling on that; I don't think so. I think by innuendo and artifice you are seeking to get something in here that is not permissible under the law, if you want to know what I think about it.

Mr. Currey: That is the first time I ever had a court charge me with artifice.

The Court: I am not charging you.

Mr. Currey: That is what I think it amounts to.

The Court: This ends it.

Mr. Currey: I have got along a long time without practicing any artifice on the courts.

267 Q. You may state, Mr. Wallace, what in your opinion was the condition of the mind of George Redeagle at the time that you knew him along about the first of July and from say a month on each side of that time?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, no foundation laid.

The Court: I will let you prove that.

Mr. Ewert: Exception.

The Court: Very well.

A. Well along before the first of July he had been a drinking some and along after the first, I think it was on the second, he was pretty drunk; he had been to Joplin and came home pretty drunk; and on the third he and I went to Joplin, and after the third I never seen him any more.

Q. I am asking you now at that time what was his mental condition with reference to his mental capacity to do business and protect his rights.

Mr. Ewert: Same objection.

A. Well at times I would consider him able to do business and at times I would consider him that he wasn't able to do business.

Q. That would be your opinion?

Mr. Ewert: Move that the answer be stricken out; no ruling on my objection.

The Court: Motion overruled.

Mr. Ewert: Exception.

The Court: Exception saved.

Mr. Currey: Now will the court permit me to state in the record the conversation that I understand this witness would testify to that he had with Redeagle?

The Court: Yes, sir, you may put it in the record.

Mr. Ewert: Exception.

268 Mr. Currey: As I understand this witness would testify if permitted at the time mentioned by the witness, after this transaction, that he told the witness that he had gone up to Joplin and that he had made a very foolish deal; he, Redeagle, made a settlement with Paul A. Ewert; and that he had spent all the money and didn't have a cent, and that as a reason why he couldn't find his attorney; that his attorney was Mr. Thompson and he didn't know what the other attorney's name was nor where he was; and that he had no way to consult with anybody to tell him what he ought to do in the premises.

The Court: Very well, you will not be permitted to prove that by this witness.

Mr. Currey: That is all.

The Court: On the ground that it is hearsay and that it has no

tendency to show what the man's mental attitude was at the time this contract was made after it was made.

Cross-examination.

By Mr. Ewert:

Q. Mr. Wallace I am not clear from your testimony, perhaps my fault, as to your statement when you went to Joplin with George Redeagle along about the first of July, 1918. Will you tell the court when you went there, the day of the week?

Mr. Ewert: Well he don't understand.

Q. You testify you went to Joplin on Tuesday preceding the 4th of July. Now what did you do after that, where did you go and where did George Redeagle go?

A. Well I went up there the day before the 4th. I testified it was on Tuesday and I thought it was on Tuesday; it was the day before the 4th of July, and I got into Joplin about twelve o'clock and we had several drinks together and went to dinner; and  
269 after dinner we had some drinks and George left me, he and his little grandson, said they were going home, and I presume they did go home. I never did see George any more until the following Monday evening.

Q. Where did you go from there?

A. I stayed in Joplin.

Q. Until the following Monday evening?

A. Following Sunday evening. I went to Baxter Sunday evening and went out to Leroy Redeagle's Sunday afternoon.

Mr. Ewert: That is all.

Mr. Currey: That is all.

(Witness dismissed.)

And thereupon A. W. ABRAMS, produced, sworn and examined as a witness for and on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Currey:

Q. State your name.

A. A. W. Abrams.

Q. Where do you reside?

A. In Ottawa County, Section 30-29-24.

Q. How far do you reside from Baxter?

A. Five miles.

Q. How far is it from Baxter to Joplin?

A. My speedometer shows it nineteen and one-half miles.

Q. How far did you reside from where George Redeagle lived in his life time?

A. The way the roads run it is a mile and a half; straight across about a mile and a little over.

Q. What if any business relations have you had with the Quapaw tribe?

A. I have been Clerk of the Quapaw Council for over thirty years.

Q. How long have you known George Redeagle?

A. Since about March, 1888, thirty years.

Q. State whether or not you are a member of the Quapaw Tribe by blood?

A. Not by blood or birth; I am an adopted member.

Q. Adopted member?

A. Yes, sir.

Q. I wish you would state now as briefly as you can the history of George Redeagle's life since you have known him down to the time of his death.

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial, covering too great a period from his birth to his death.

The Court: Overruled.

Mr. Ewert: Exception.

Q. Go ahead.

A. At the time I first became acquainted with George Redeagle he came to my house on the Frank Ballard Place. He was residing in the Osage Country. He was a young man, married and I considered him very bright.

The Court: How long ago has that been?

A. That was in February or March, 1888.

The Court: How old was he then?

A. I would think that he was about twenty years old at that time; and he had the appearance of being a very bright Indian, talked good English; wrote a good hand, and as Clerk of the Council I needed some one who was a good interpreter and I found he was the best interpreter we had in the tribe, could tell it the nearest. He went back to the Osage Country. People used to have to work those days; he was working out there. I saw him occasionally from then on probably twice a year. Along probably in 1894 or '5 John Wyrick brought him to my house over where I lived.

The Court: What year was that?

A. I said about 1894 or 1895 is my recollection. He brought him to my house, brought his wife with him and Mrs. Wyrick came along. George's arm, seems to me like his left arm, had been broken, he had but little use of it, and George was wild, he was crazy, had to have an attendant. Of course hearsay is all I know about how it occurred and all like that.

Mr. Ewert: Well don't tell it. We object to it.

A. Do you want that?

The Court: No, don't tell what you heard.

A. Well I heard how it occurred but I am not telling you because I don't know. He did come there and he was wild—well he was crazy.

Mr. Ewert: Move to strike that out that he was crazy, might be misunderstood.

The Court: What do you mean? Crazy from pain?

A. No, his mind, his mind; he was not right. He couldn't talk on any subject.

The Court: Was he in pain?

A. Well he was some in pain.

The Court: In what way?

A. That broken arm and it was just getting well is my recollection and it was tied up yet.

The Court: How did he act when you say he was crazy?

A. He tried to run away.

The Court: Did he seem to be afraid of you?

A. No, he was not afraid of me because he knew me one of his best friends.

The Court: Why did he try to run away then?

A. Of course this other history would probably explain why but he was crazy to a certain extent.

The Court: What do you mean to a certain extent now?

A. Well he couldn't talk connectedly, couldn't tend to any business. His wife was afraid of him. John Wyrick brought  
272 him in as an attendant; and I can't remember the renter's name that was on George's place across the river. We went over and got them to come and take charge of George because they were on his place and they could afford to look after him, afraid he would kill himself. So they did come and take him over there and he and his wife. But George gradually got better as time went on. Finally got to do his own business, became reasonably bright; but as he got better he seemed to drink a great deal whenever he could get any money he was always drinking, just a question of getting money. I have loaned him money I guess fifty times.

Mr. Ewert: Your Honor I think that is assuming too great a range.

The Court: No, I think that is competent.

Mr. Ewert: All right.

A. I told him several times, George I am not going to let you have any more money, it don't do you any good, you go and drink it up. Come and borrow money to get feed and take that money and go and get whisky; that is I could see him immediately afterwards the next day he was drinking and I would accuse him of it. Says I, don't do you any good to lend you any money. He always paid me as far as that is concerned.

The Court: You say he always paid you?

A. Doesn't owe me a cent.

The Court: He must have been a good trader and thrifty then.

A. No, it was not trading.

The Court: How did he get the money to pay you?

A. Rents and royalties. For a long time I had his land leased.

The Court: For what purpose?

273 A. Hay.

Q. Was that Indian restricted lands?

A. Yes, sir.

Q. What lands he got from the government?

A. It was a part of his wife's and childrens' allotments.

Q. How is that?

A. It was a part of their allotments belonging to his family. I let Davis have the land, sub-lease. So he always paid me as I say. And then later on I had that forty acres where he lived. I had a mining lease on that and of course then it was good; I could loan him money, which I did several times and didn't charge him any interest. I sold that lease and afterwards loaned him some money and he afterwards arranged—I went down and got that money the check for the money.

Q. Now what period are you at now?

A. I have got down to last year, along in the spring of the year probably he paid me the last penny he owed me.

The Court: Spring of 1918?

A. Yes, sir, along—well I think it was in the spring of 1918.

Q. Well how did he pay you that?

A. He had owed that longer than any money I had loaned him and I had dunned him and dunned him and couldn't get it. And finally I went down there and got him at the Redeagle Mine. I says, George, I want you to go in the office with me and sign an order on these people, I want my money. He says, "all right." That day he was duly sober so far as I could see. We went in to the office; I told the bookkeeper, foreman, whoever he was, superintendent; he says, "If George says so I will just make a check to you for the amount." I think it was ten or twenty dollars.

Q. Was that minor or restricted lands?

A. Oh yes, land that had been allotted to his wife Minnie Redeagle, she was dead.

274 Q. How many wives did he have?

A. I have seen three that claimed to be his wife and he said they were his wives, I never saw any of them married.

Q. Do you know of any property that he ever had except what was derived from these lands that he got from the government and from inheritance from other Indians?

A. No, I do not.

Q. Do you know of any property of any kind?

A. No.

Q. Go ahead.

A. I never had any more dealing with him. I refused to deal with him.

Q. For what reason?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial.

Mr. Currey: I will withdraw the question.

Q. You may state to this court whether or not you have had constant business affairs with Mr. Redeagle, joined in connection

with your seeing him from time to time and associating with him or talking with him, such as enables you to form an opinion as to his mental capacity to transact business?

Mr. Ewert: That is objected to.

Q. Now answer first whether or not you have. Read him the question.

(And thereupon the question was read by the reporter.)

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial and asking for a conclusion on the part of the witness as to what his associations have been, instead of leaving his testimony to the court to determine that the court itself may determine whether or not his associations have been such as would warrant him to make such a statement.

The Court: Now you say now the last transaction you had with him was in the spring of 1918?

A. I think it was right about there.

275 The Court: Did you have transactions with him in 1917?

A. Oh yes.

The Court: Loaned him money in 1917?

A. Yes.

The Court: Still have some of this land leased?

A. I think I got rent on it in 1917 but I am not sure.

The Court: Then your recollection is that from 1894 or 1895 up to 1917 you had land in one capacity or another leased from him and had transactions with him all those years?

A. Yes.

The Court: All right, the objection is overruled. He may answer the question.

Mr. Ewert: Exception.

Q. First state whether you have from these sources whether you have an opinion as to his mental capacity to transact business?

A. I don't think he was fit to deal. I refused to deal with him personally.

Q. What is your opinion of the status of his mind about July 1, 1918?

The Court: If you know.

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, no foundation laid as to the time.

The Court: Did you see him about the first of July, 1918?

A. I haven't my dates down, Judge.

The Court: Well according to your recollection did you see him about that time?

A. Yes.

The Court: Whereabouts?

A. Well I saw him in Joplin; I saw him in Baxter, down at his home; down at the Redeagle ground as they called it, and he was up to my place, but as to the date I can't tell.



276 The Court: He may answer the question.

Mr. Ewert: Exception, please.

Mr. Currey: You may answer the question the court says.

A. What is that question?

Q. What is your opinion as to whether or not his mind was in such condition as to be capable of transacting business along in the early part of July?

A. Don't think he was fit to do it; I refused.

The Court: What do you mean by fit?

A. He was drinking all the time; he seemed to be getting some money some place, I don't know where.

Q. What was the status of his intellect?

Mr. Ewert: Same objection.

A. Well when he was drinking he didn't have any, talked foolish.

The Court: Let me get this idea from you. You mean he was a bad business man or wasn't a man that could understand the kind of contract he was making? You know there are lots of people know what they are doing and are legally competent under the law to transact their own affairs but yet they make what we call improvident contracts. Did he have the capacity to understand the kind of contract? That is what I want to know. You say you quit dealing with him in 1918.

A. Yes, sir.

The Court: Now when you quit dealing with him did he have capacity to know what character of contract he was making?

A. I didn't consider that he did, drinking so much. Drunk nearly all the time. I saw him but twice I think last summer twice I think that I really thought that he was sober.

277 Q. State whether or not you saw him along about the time of his marriage or afterwards?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, because the date of his marriage antedates and is subsequent to this transaction.

The Court: I understand it is right close to it. You might ask him if he saw him along about the time for the purpose of ascertaining how near he saw him relative to this contract.

A. I have no more idea when he was married more than the man in the moon, but I saw him two or three days after he said he was married. I was in Joplin.

Q. Now what was the status of his mind in your opinion when you saw him in Joplin?

A. I wouldn't do any business with him, he was drunk; drinking.

Q. Did you ever come across him when he was sober in the year 1918?

A. I think I saw him twice when I felt he was really sober in the last year or so.

The Court: What was the condition of his mind then as to his

capacity for understanding a contract and understanding what a business transaction was the few times you saw him sober in 1918?

A. When he was sober he was not wild. He seemed to me he was just a fair ordinary Indian at that time.

The Court: The two times that you saw him sober in 1918 he appeared to be a fair, ordinary Indian as far as capacity, Quapaw Indian as far as capacity to transact business, is that what you mean to say?

A. Yes.

278 Mr. Currey: Now don't answer this question. I don't know whether the court will allow you to answer it or not; not until after the objection.

Q. What is your opinion with reference to whether or not he had such a desire for liquor, whisky or strong drink, as that the desire would over-balance his mind when he was out of money and desired to get it?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, calling for a state of mind.

The Court: If he has any authorities on that I will hear him.

Mr. Currey: I think there are plenty of authorities.

The Court: If there are you certainly can find them.

Mr. Currey: I can't remember the kind of questions framed but I do know there are a good many of those kind—I know the proof gets into the record some way, that the desire for liquor overcomes their discretion in transactions.

The Court: Well a man may love liquor so that he will part with his money. You might say because a man will give ten dollars, in these prohibition countries, will give ten dollars for a pint of whisky he is crazy; I know of some business men in the country to do that.

Mr. Currey: Yes, but your honor overlooks the measure of discretion.

The Court: They do that without regard to money. I know a fellow, president of a bank, that has \$500,000.00 deposits and I saw him one day in a hotel; he went out and came back in a few minutes and he had a bottle of stuff I wouldn't have it; I says, what did you give for it? He says, ten dollars. Well now on that theory

279 you might disqualify that man and show he wasn't qualified to attend to business.

Mr. Currey: But there are a great many cases in the books where an habitual drunkard's contracts were set aside on account of the loss of capacity on account of habitual drunkenness. I don't know how to propound them except the character of questions I have asked this witness.

The Court: I don't think this witness was associated enough with him to know; he says he only saw him a few times in the last few years.

Mr. Currey: In this hearing I think it is what the court wants to hear in order to certify what the surrounding circumstances were, so it is merely a matter of pure discretion. I don't know of any remedy anybody would have if the court would inquire of the

neighbors and made a certificate, and I don't know but what it would be just as legitimate.

The Court: It looks to me we ought to have some regard for the rules of law. Now I will let you put this witness back on the witness stand to offer that proof later about the drunkenness feature, about his desire for whisky. That is the way to put the question about his desire for whisky.

Mr. Currey: What was the question?

(Question read by the reporter.)

Mr. Currey: I will re-ask the question.

Q. What is your opinion as to whether or not George Redeagle by reason of having drank and having been on long sprees of drunken debauchery, had or had not at the time of this transaction, say in July, 1918, reached a stage where the desire for liquor had so impaired his intellect as that he would make any kind of a sacrifice of his property to obtain liquor?

280 Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, and incompetent because no foundation is laid.

Mr. Currey: I don't know what he means by foundation.

Mr. Ewert: Second, that he is asking the witness to state what the condition of mind of Redeagle was with respect to his desires.

The Court: I think this is not competent, one reason is this: that question would open up so many collateral issues; what other property he had; what other means he had to get whisky; as to whether or not he probably made this deal to get whisky. It looks to me like that would be dangerous if you admitted under the rules of evidence opinion evidence, so many collateral issues. It appears to me that this is what is to govern: Whether or not this man had the capacity to understand what a contract was. If he had that capacity he could give away—if I have ten thousand dollars I can say here I will give it to you, and who has any right to complain about it? Some man might come up and say "He is crazy, he is giving his stuff away." And lots of citizens say because a man gives \$1.50 for a pint of whisky he is crazy.

Mr. Currey: Unless the question throws some light on the status of his intellect, don't make any difference whether it is collateral or not if the evidence throws light on the status of his intellect I think it is legitimate. Judge Sanborn in the D— case, 227 Federal, in passing on when an Indian was competent to be dealt with, stated that the testimony must show that he was capable of investing and re-investing his property so as to make a profit.

281 The Court: You say 227 Federal?

Mr. Currey: I have just sent for it. Now if you take that statement literally there is just about one-half of us white people that would come under the condition. I have been able to invest my money but never been able to get it back in most instances. But I don't think—there are three cases there.

The Court: What name?

Mr. Currey: U. S. v. Debell or Deboll v. U. S.

(And thereupon the court read from the decision cited.)

Examination.

By the Court:

Q. Mr. Witness you stated this Indian was a bright educated Indian, is that right?

A. I am a little bit hard of hearing, but as I understand it he didn't understand how many cents in a dollar or how many other things, I wouldn't consider him very bright.

Q. How did he always know how to pay you and see what was owing you?

A. You are speaking of Mr. Redeagle.

Q. Yes.

A. He used to be bright.

Q. Well he knew how to write did he, wrote well?

A. Yes, he wrote a very fair hand.

Q. He was educated then wasn't he, an educated Indian?

A. He had been to school quite a bit.

Mr. Ewert: Been to Haskell University hadn't he?

A. No, he hadn't I don't think.

Q. What school had he attended?

A. The Quapaw Mission School there on the reservation at that time. I think Haskell wasn't in existence when he went to school; that would put it over forty years ago, somewhere like about that.

George's mind when he come to me was always clouded with  
282 whisky and his face bunged up and his face mashed; I wouldn't do business with him. It may have been a personal affair; I won't do business with any drunk man.

Q. The times you made trades with him then he was sober was he?

A. Yes, I went out to Hominy when I made that lease; he was out where he couldn't get whisky.

Q. When you would loan him money would he be drunk?

A. Well some times he was drinking.

Q. Well now you did trade with him then when he was drunk?

A. Yes, but I have scolded him many a time, says I, George you are drinking now.

Q. He always remembered it and saw that you got paid?

A. I took it out. I would charge him with the amount of money I had advanced him.

Q. Yes and he always accounted for it and accepted your statement?

A. Yes.

Q. Never disputed your claim?

A. No.

Q. He must have remembered it then didn't he?

A. I presume he did, I got my money.

The Court: If you will get your authorities before you finish the case I will let you put him back and ask the question.

Mr. Currey: All right. Take the witness.

## Cross-examination.

By Mr. Ewert:

Q. Mr. Abrams, you stated that George Redeagle came back into the country from the Osage country in 1895, did you not?

A. No, I didn't say that at all.

Q. The Quapaw Indians received their allotments in 1894 and patents issued in 1895 did they not, and isn't it a fact that George Redeagle was the official interpreter for the tribe for many years? I think you have stated that.

A. I don't think he was ever official interpreter. He did interpret and his name is signed in many places as interpreter yes, sir.

Q. Now, George Redeagle had by his wife that you spoke of a number of children did he not?

A. Yes.

Q. The Quapaw Indians each received 240 acres of land didn't they?

A. Yes, sir.

Q. And Redeagle's wife was a Quapaw Indian?

A. Yes.

Q. And she received 240 acres?

A. Yes, sir.

Q. And the children received 240 acres didn't they?

A. No Doan didn't; Doan came too late I think, he only got 40 acres.

Q. You were assisting in the allotment of those lands if I remember?

A. Yes, sir.

Q. And how many children did he have who did receive the 240 acres?

A. Well Sophia, she is one; Josephine now; Leroy Redeagle; I think they all got 240; Doan I am satisfied only got 40 acres.

Q. Five of his children then received 240 acres?

A. I said three.

Q. Three received 240 acres and George and his wife each received 240?

A. Yes.

Q. George during that period handled the farms and rented and leased them for his children did he not, looked after their interests?

A. Yes.

Q. That made about 1,200 acres of land all told that he was looking after, three children received 240 would be 720 and he and his wife 240 acres each—

A. Wait a minute. His children didn't all get 240 acres; Doan only got 40. Sophia got 240 and Leroy 240 is my recollection and he and his wife 240; four of them 240 and Doan 40 acres.

Q. That would make 1,000 for the 4, 960?

A. Yes, about a thousand.

Q. Now during that time up to the time these children became

of age George Redeagle managed all their property didn't he, this thousand acres?

A. Yes, he and his wife.

Q. Now in addition to that he received some inherited Indian land didn't he and he managed that?

A. I don't call it management.

Q. You leased it of him for fifteen or twenty years?

A. No I didn't, not that inherited land; I don't think I ever leased a foot of his inherited land; if I did I don't remember it.

Q. Now you stated you quit doing business with him.

A. Yes, sir.

Q. About the first of April, 1918 you say?

A. No, the first part of the year.

Q. Now how many times did you see George Redeagle from that time until say the 5th day of July, 1918?

A. Probably once a week, some times twice a week.

Q. During all that time?

A. Yes.

Q. Now as a matter of fact—I don't want to trip you—you know he was in the Osage Country for two months beginning in April, 1918, and come back only once up to the 24th day of June; now why do you make that statement?

A. Well I am only making it generally; of course I would know that he went; I would hear he went to the Osage.

Q. Then you are mistaken about seeing him once a week?

A. Well I may be; when he was at home I generally saw him once or twice a week.

285 Q. When was the last time you saw him, say about the first day of July, 1918?

A. I have no record of it.

Q. About when?

A. I couldn't tell; I saw him in Joplin.

Q. When?

A. He said he had just got married; he had a new wife with him.

Q. When did you see him before that?

A. I can't tell.

Q. About when?

A. I can't tell.

Q. You say you saw him once a week?

A. It seems to me as though I saw him every few days.

Q. Did you see him once a week before this?

A. No, I wouldn't say; I made no minute of it; couldn't swear when I saw you.

Q. So you can't tell when you did see him prior to the 11th day of July or after he was married?

A. I saw him a few times right along in there.

Q. You leased all the George Redeagle land for mining and agricultural purposes for a period of eight or ten years didn't you, you and your companies?

A. Yes, that is I am not sure that we leased that over on the north-

west corner the last time we made leases I don't think we did; I don't think we wanted it.

Q. But you did at one time have a lease on all the Redeagle land?

A. I think I did at one time.

Q. And you continued to do that business all the way up to the first of April, 1918, leasing for mining purposes and agricultural purposes more or less during all that time?

A. No, I haven't had any agricultural leases on it for ten or twelve years.

Q. But you had mining leases on it and have now haven't you?

A. I had a mining lease on that forty acres where he lived. I had it from he and his children, got it is my recollection in 1915; I went out to Hominy. No I haven't got it now.

Q. You didn't think he was crazy then?

A. He was sober then.

286 Q. And when he was sober he was all right?

A. Well I did business with him.

Q. Sober enough to do business?

A. Yes.

Redirect examination.

By Mr. Currey:

Q. The majority of these Indian lands——

The Court: Colonel, this has got to be the rule of this court. Here is the decision of the Supreme Court: (Reads.) It looks under this rule these witnesses ought to be examined. Go ahead. As this was a controlling case I thought I would call attention to it and I think covers this case.

Mr. Currey: Yes, I think that case covers the law.

The Court: Proceed.

Mr. Ewert: I think we have finished our cross-examination.

Q. Mr. Abrams, Mr. Ewert asked you in regard to managing all this allotment lands, what does the management consist of?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, as to what the management of a man's business is.

The Court: He may ask that.

Mr. Ewert: Exception.

Q. What did that management consist of?

A. Oh well I had his land fenced for him, of course we talked it over.

The Court: When you had it fenced for him did you go over the details of what it cost?

A. Oh no.

The Court: How it was going to be paid then?

A. The first way that the Indians got their lands nineteen out of twenty of them I would hunt up a white man for them that would



287 fence the land and do some improving on it and pay them a small cash payment so they could live along. Now they had that land for five years the first contracts.

The Court: Well would it be submitted to the Indian the contract?

A. It was a labor contract; we were not allowed to make leases at that time; I helped them in that. They would get somebody to fence their land and pay them some money besides so they could live along. They were willing to — it, they agreed to it.

Q. Now then this was grass land?

A. Yes, that was grass land. I am coming to his farm across the river. That was already a farm when he had it allotted. A man by the name of Beasley improved that. It didn't belong to any particular Indian; it belonged to the tribe. He improved that and fenced that; built some cabins on it, broke out a lot of land, but finally as I say it belonged to the tribe and the tribe got the rent out of it from Beasley, he paid them so much of whatever he raised. But when it come to allotment George got that improved place. I never had that as an agricultural property. I did have a mining lease on it a time or two.

Q. How much was in that piece of ground?

A. Well you mean under the plow?

Q. Under the plow, how much under the plow?

A. I would think something like thirty or forty acres down that river bottom.

Q. Was that farmed by George himself or did he rent it?

A. If he ever plowed a lick I never knew it.

Q. Did he ever carry on any mining operations or farm business where he hired hands and carried on the business?

Mr. Ewert: Objected to as incompetent. Many a man has a farm and hires some one to work it.

288 The Court: I will admit it; I don't think there is very much weight in it.

Mr. Currey: It is in response to the evidence the gentleman offered.

Q. I didn't understand your answer, you say he never did carry on any mining operations or farm operations?

A. No, sir.

Q. Did you ever know of him to do any business where he employed hands and employed men to work and had supervision?

A. All I know is what he told me. He said he had a hired man down there. He came up to borrow some money a time or two to pay his hand.

Q. That was the extent of his management?

A. So far as I know in that instance.

Q. All this time you knew about this land state whether or not you ever knew him to do anything in the management of it any more than rent it out?

A. That is all.

Q. It was leased by supervision of the government or under some acts of Congress permitting them to make leases?

A. I didn't know the government was handling it for him; I think he was doing it himself.

Q. Did you ever know George Redeagle to make an investment of any kind?

A. Never did.

Q. And he owned a very large amount of land?

A. He and his family.

Q. That come through the tribe?

A. Yes.

Q. And during his whole life you never knew him to make an investment?

A. Never heard of any.

Cross-examination.

By Mr. Ewert:

Q. Now Mr. Abrams you say you never knew him to make an investment; you knew he bought horses and bought stock didn't he, he had quite a number of horses?

A. I saw him driving a team and he told me he bought it.

Q. But he never told you about his own investments?

A. No, sir.

Q. As a matter of fact he was a carpenter by trade wasn't he?

A. Carpenter?

Q. Didn't he build his own house?

A. Oh no, Mr. Ryan built that house as far as I can remember; the one up there by the mill I am satisfied Tom Ryan built that. Now who built the house where he lived in last I don't know.

Q. Well he frequently worked and did carpenter work?

A. Never heard of it.

Q. You never did?

A. Never did, if he ever did a day's work of that kind I never heard of it.

Q. But in all your dealings with him you dealt with him and nobody else; you didn't get anybody else to do business for him?

A. No, I went to him, he and his wife.

Mr. Currey: His investment in stock you say was just buying a team of ponies?

A. I don't know he bought them; he told me they were his.

Q. He had stock around his place?

A. I don't know that.

Q. Did you ever see him driving a wagon?

A. Yes, sir, wagon and team, but I don't know about his stock around the farm.

Q. You have been to his place haven't you?

A. Yes, sir, lots of times.

Q. And you saw stock around there?

A. No, sir, I didn't.

Q. Never saw any hogs there?

A. No, sir.

Q. Never saw him have a cow?

A. No, sir, I have heard he had a cow but I don't know it.

Q. You don't know what investments he did make?

A. No, all I know about the team is what he said.

290 Q. You are just basing your information on what you may have heard?

A. Oh yes.

The Court: Any other questions from this witness?

Mr. Ewert: That is all.

(Witness dismissed.)

And thereupon a recess was taken until 2 o'clock p. m.

And thereafter at two o'clock p. m. court reconvened pursuant to adjournment and the following proceedings were had:

And thereupon A. L. JONES, produced, sworn and examined as a witness for and on behalf of the plaintiff testified as follows:

Direct examination.

By Mr. Currey:

Q. State your name.

A. A. L. Jones.

Q. Where do you reside?

A. Miami, Oklahoma.

Q. How long have you resided at Miami?

A. Three years.

Q. Where did you reside before moving to Miami?

A. Baxter Springs, Kansas.

Q. What is your avocation?

A. Minister.

Q. Are you acquainted with George Redeagle or were you during his life time?

A. Yes, sir.

Q. For how long?

A. About sixteen or seventeen years.

Q. Have business dealings with him?

A. Yes, sir.

Q. For how long a time?

A. Well about 1911 or 1912, 1912 first business relations.

Q. Do you remember what that business relation was?

A. Well yes, sir.

Q. What was it?

A. I was made—I was given a power of attorney to transact some business for him.

291 Q. Where was George at that time?

A. Well at the time he was at his home.

Q. How long did that continue?

A. I think some thing like a month or such matter.

Q. What was the nature of the business?

A. Well he owed some debts in Baxter and they were attaching his team and he agreed to give me a power of attorney and turn some money coming to him from some land into my hands to pay those debts and they agreed not to attach his team.

Q. About that time did he have some trouble of some kind?

A. Well I think about a month or six weeks he was implicated in a murder at Pawhuska or Hominy.

Q. Was he in jail?

A. Yes, sir.

Mr. Ewert: We ask to have that stricken out of the record; it is purely hearsay.

The Court: How did you know that?

A. Well I used some money that he turned in to my hands to employ an attorney to go over there and defend him.

The Court: I think that is all right.

Mr. Ewert: Exception.

Q. From that time on about how frequently did you see him and talk with him?

A. Well until four years ago I would see him some times every day and some times only once a week. He passed by my home going to his home.

Q. On friendly terms?

A. Oh yes.

Q. Since that time, since that four year period about how frequently have you seen him?

A. Well not very often; I judge I would see him probably six to ten times a year.

Q. Have you had sufficient acquaintance with Mr. Redeagle during these years to enable you, judging from his conduct and his conversation and your observation of him to form an opinion as to his mental condition?

The Court: No, I don't think that is the rule under the decision of the Supreme Court of the United States. I think the rule is to state the facts.

Q. Well make as detailed a statement as you can of his conduct how he did, if he did any business what was the character of it and what his habits were.

Mr. Ewert: I object to that — incompetent, irrelevant and immaterial.

The Court: I think this case governs (Reads). That is a statement of fact. I don't think he is competent to say "I have an opinion." He swears to the facts, as he sees him through his eyes; looks at him and he appears wild, he states all these things and if he appears not to act like a sensible man, that is swearing to a fact.

Mr. Ewert: The witness has testified, Your Honor, that he didn't see him only six times a year.

The Court: I know.

Q. Now Mr. Jones state what your opportunity for observation was; describe when you would see him and what his appearance was and what he would be doing, anything that would describe his condition.

A. I don't know whether I just catch your meaning.

### Examination.

#### By the Court:

Q. How many times did you see him last year?

A. Well I suppose ten or twelve times up till his death.

Q. Now when was the last time you saw him?

A. The 16th day of October, last October.

Q. Then when before then?

A. Well I couldn't say.

293 Q. About when, your best recollection?

A. Oh I judge a month back, something like that.

Q. Tell what his condition was.

A. The last time?

Q. Well during 1918, you say you saw him ten or twelve times.

A. Well he was so different in the last three or four years to what he used to be that I kept out of his way and had as little conversation with him as possible.

Q. What do you mean by his being different?

A. Well when I first knew George he was what I would call a strong minded Indian; he was looked upon as being a competent Indian, but of later years he would want to borrow some money from me and his talk wasn't of any interest to me whatever.

Q. What do you mean, wasn't of any interest, what do you mean by that expression?

A. For instance, if it is proper, the last conversation I had with him he wanted to give me a lease on a certain piece of land; he wanted \$100.00 for it, then he offered to give me a lease for a dollar, and so I got away from him.

Q. Now that was in October?

A. 16th day of October.

Q. How long before he died?

A. Month or so, I don't know when he did die.

Q. Was he sober when he talked to you?

A. Why I thought so; I didn't smell any liquor on him.

Q. Do you think he knew what he was doing when he was talking to you?

A. Well yes and no. It is a hard question to answer. He wanted some money, anything for some money. That is an indefinite answer but I don't know how to answer.

Q. That was in October, when did you see him before then?

A. Well I wouldn't be definite about that. He usually come to Miami I think about every month or every two or three weeks.

294 Q. Do you remember having any conversation with him along in June, July or August?

A. No.

Q. You never had any conversation with him?

A. Not to my knowledge; if it was it wasn't a business matter to impress me.

### Examination.

By Mr. Currey:

Q. What impression did you associate with him or your knowledge of him, what impression did that fix on your mind as to his competency or incompetency to transact business and protect his financial interest?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial on the foundation which has just been laid by the questions of the court. Couldn't tell when he saw him in the summer time or any of those things.

The Court: This is three months after this contract was made, that is the difficulty about that.

Mr. Currey: You remember that case in the 79 Atlantic.

The Court: I will let him answer, but unless you can strengthen it by showing his opportunity for observing I won't consider it of much probative weight.

Mr. Currey: They say there that a condition established afterwards is presumed to have existed for some time before that, or if it is established before to continue on up to the transaction. That is the theory.

The Court: I will tell you how this evidence impresses me; when he was drunk he wasn't competent to transact business, but when he was sober he knew what he was doing and understood his contracts. That is the way the evidence impresses me. Proceed with your witness.

Q. Can you answer the question?

Mr. Ewert: I think that was objected to.

295 The Court: Well let him answer.

Mr. Ewert: Exception.

A. What was the question?

Q. What impression was fixed in your mind or what impression did you get of this Indian's competency to transact business and make contracts and protect his own financial interest as to his competency or incompetency to transact business?

Mr. Ewert: Objected to upon the ground that it is incompetent, irrelevant and immaterial and indefinite as to time and place; no facts stated.

The Court: He may answer.

Mr. Ewert: Exception.

A. Well I think when George was sober he knew what he was doing; he could read; he was educated as an Indian, but he was so weak in his life in his character, that he was so easily persuaded and overcome; he had no stability. I believe that is about the way to put it.

Q. What do you mean by stability, stability of mind or morale?

A. Well both.

Mr. Currey: You may take the witness.

Cross-examination.

By Mr. Ewert:

Q. Mr. Jones you are the defendant here in quite a number of suits to be tried at this term of court in which Paul A. Ewert is plaintiff are you not?

A. I am in two of them.

Q. Now you did business with George did you not, took leases from him?

A. I took one lease.

Q. From 1910 on clear through to last year?

A. One lease on a piece of land, one piece of land.

Q. And last year you had some business relations with George didn't you concerning that lease?

A. George came in and wanted to cancel it and it was  
296 no good to me and I cancelled it to clear his title.

Q. Now you took leases on that Chidasque land in 1909, 1910, 1911 and 1912 didn't you?

A. I think so.

Q. Now as a matter of fact you had some property of George didn't you that he wanted to get back along about 1915?

A. No.

Q. Didn't you have his piano?

A. No.

Q. Didn't you afterwards have his piano?

A. No, sir, I had it covered by an individual mortgage; I took a mortgage from his son and his wife and George on that piano.

Q. And you foreclosed it and took the piano?

A. Yes, sir.

Q. And you thought he knew enough then to know what he was doing didn't you?

A. Yes, sir.

The Court: What year was that?

A. The mortgage was given along about 1912 or 1913.

The Court: When was it foreclosed?

A. About two years afterwards, something like that. He gave me a bill of sale to it.



Q. Now Mr. Jones you say you are a minister and live at Miami; how you are engaged also in the mining business?

A. I have some mining leases yes, sir.

Q. And you have resided at Miami three years and before that you were at Baxter Springs?

A. Yes, sir.

Q. What business were you in?

A. I was preaching at Miami and had an interest in real estate and insurance and loan business.

Q. You kept an insurance and loan business at Baxter?

A. Yes, sir.

Mr. Ewert: I think that is all.

(Witness dismissed.)

297 And thereupon A. L. HARVEY, produced, sworn and examined as a witness for and on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Currey:

Q. State your name.

A. A. L. Harvey.

Q. Where do you reside?

A. Baxter Springs, Kansas.

Q. How long have you resided at Baxter Springs, Kansas?

A. Over thirty years.

Q. What business are you in?

A. Furniture and undertaking.

Q. Are you acquainted, were you acquainted with George Red-eagle in his life time?

A. Yes, sir.

Q. How long did you know him?

A. Oh twenty or more years, commenced along in the 90's, I don't know what year.

Q. Did you know him within the last five years before his death?

A. Yes, sir.

Q. Did you know him all along during the past twenty or twenty-five years when you first knew him?

A. Yes.

Q. Are you acquainted with his habits of life when he was younger?

A. Fairly well.

Q. Detail as near as you can what transactions or business relations you had with him.

A. The only relation I have ever had with him was business relation, that is business having sold him furniture and merchandise and having gone to his home in the capacity of an undertaker on several occasions and befriending him once or twice when he got in jail, bail him out something of that kind.

Q. How long a period does that run over, how recent were any of these transactions?

A. The death of his second wife or the wife prior to the last.

Q. How long has that been?

A. Year and a half or two years.

298 Q. Since that time how frequently have you seen him?

A. Oh I have seen him I presume every time he came to town, about every time, I would meet him on the street; I didn't meet him in a business way, probably about once every couple of weeks.

Q. Can you describe any change in his appearance that took place during the years that you knew him?

A. Yes.

Q. I wish you would.

A. When I first knew him I considered him one of the bright men of the Quapaw Tribe; he was then an interpreter, wrote a good hand, seemed to have a little above the average intelligence. Along in years he became addicted to liquor and the last few years he showed the effects of it; he got so he was very much bloated; had no control of himself; had no self-respect.

The Court: What do you mean by self-respect?

A. Well he didn't care as to his habits or condition. As a younger man he had been quite proud. The last few years he became what you might say a drunkard on the street.

The Court: You mean an improvident man is that it?

A. Yes.

Q. What impression did you have from your observation of him and his condition as to his mental condition?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, no foundation laid.

Q. And his ability to transact business?

Mr. Ewert: Asks for an impression rather than a description of a man.

The Court: Not his impression but the facts. He must see much that he knows, not a suspicion.

Q. Well what do you say as a matter of fact as to whether or not George Redeagle was competent to do business?

299 A. How late a period?

Q. Well down to the time of his death for a year prior to his death.

A. Well I refused to do business because I had no confidence in him; didn't think he had ability to do business.

Q. For how long a period?

A. Practically year or year and a half back.

Q. Well was that because you believed he was or felt you knew he wasn't competent to do business?

Mr. Ewert: That is objected to as leading and suggestive.

The Court: Let me ask the question. Was it because you didn't think he knew what was the proper thing in business or you had lost confidence in his moral responsibility and integrity? What I want to know whether or not—now you know some men are smart; they know what is right and wrong; they know what a good contract is, but they have no responsibility, if they promise to do a thing they won't do it. That may be inherent in some men and in some men it may be brought about by vice, drunkenness. Do you think he had the mental capacity to understand what a real contract was during the year 1918?

A. I don't think he did.

The Court: In your judgment?

A. In my judgment he didn't.

Mr. Curry: You may take the witness.

Mr. Ewert: I think that is all.

Mr. Curry: That is all Mr. Harvey.

(Witness dismissed.)

And thereupon J. E. POTTORFF, produced, sworn and examined as a witness for and on behalf of the plaintiff testified as follows:

300 Direct examination.

By Mr. Currey:

Q. State your name.

A. J. E. Pottorff.

Q. Where do you reside?

A. Miami, Oklahoma.

Q. How long have you lived in Miami, Oklahoma?

A. Almost nine years.

Q. George Redeagle lived near Miami, Oklahoma, during that time, did he?

A. He lived over near Lincolnville.

Q. How long did you know him?

A. Five or six years.

Q. Have you a business interest that took you up in the neighborhood where Mr. Redeagle lived?

A. Not where he lived, no, sir.

Q. Did you ever have any business transactions with him in his life?

A. Yes, sir.

Q. What was it?

A. Well, I had a lease on a piece of land that belonged to his wife and he usually attended to the collection of the rent on it.

Q. When was that?

A. Well, I suppose it has been about two years, maybe little more than two years, since he married this woman; I had a lease on the land at the time he married her and he transacted the business.

Q. Now, Mr. Pottorff I wish you would just describe Mr. Red-

eagle, his appearance, whatever you can, describe his conduct and his appearance from the time you knew him down to the time of his death.

A. Well, most of the time that I knew him he was drinking considerable, and the latter year or two of his life I never seen him but what he was intoxicated.

Q. Did he ever come to your house?

A. Yes, sir.

Q. Just go on and tell what conversations you had with him when he came to your house or elsewhere.

A. Well, generally I gave him a check for those rentals  
301 so he could go, but he frequently would go and sit around and talk in a maudlin condition until he decided to get up and leave. Of course there was no sense to his talk.

The Court: He was drunk then?

A. Yes, sir, he was intoxicated more or less.

Q. On down to how long, when was the last time you seen him?

A. Well, I just couldn't tell you. It was between the time of his marriage to this last woman and his death and different times in that time, but I couldn't give you the dates.

Q. Saw him at different times and different places and under different conditions?

A. Yes, I saw him at different places.

Q. Well, now, from your observation and association and dealings and knowledge of George Redeagle what do you say with reference to his mental capacity to transact business and protect his rights?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial; the witness hasn't shown that he has any knowledge of his mental condition.

The Court: I don't think so. He didn't have any dealings except to make the lease and he came to get the pay. The other witnesses you have put on show when he was sober, the man that lived with him on the place testified he would be drunk some times and sober some times.

Q. Did you ever see him when he wasn't drunk?

A. In former acquaintance with the fellow I did.

Q. How far back?

A. The first three or four years of my acquaintance with him, but during that time I didn't transact any business with him.

The Court: How many times did you see him in 1918?

A. I couldn't say.

302 The Court: Whereabouts did you see him?

A. Well, most of the times there at home.

The Court: Did you ever go to his house?

A. No, sir.

The Court: Did you see him as many as a dozen times?

A. Well, I suppose I did. He drew the advance money.

The Court: Have you got any other reason to form an opinion

about his mental disqualification other than you have seen him drunk and seen him talking in a maudlin way?

A. Well, nothing only in a general way.

The Court: I don't think this man is qualified.

Mr. Currey: Well, I want to ask two questions so I can have the benefit of it.

The Court: Very well.

Q. Within the last year, during the year 1918, did you have enough intimate acquaintance with George Redeagle to form an opinion as to his mental condition?

Mr. Ewert: Objected upon the ground no foundation laid; incompetent, irrelevant and immaterial.

### Examination.

By the Court:

Q. How many times do you say you saw him during 1918?

A. I expect ten or a dozen times; he frequently came there.

Q. Well, did you talk to him about his business or anything specially during that time?

A. Well, at the time he was having some difficulty with this last woman.

Q. What did he say to you?

A. I couldn't hardly tell you, he was in an intoxicated condition at the time.

Q. He was drunk?

A. He was intoxicated.

Q. And you never saw him that he was sober that you remember during the year 1918?

A. I don't believe I saw him when he was really sober.

Q. And you probably saw him as much as a dozen times?

A. That is a matter of guessing.

Q. Can you swear now as a matter of fact, as an opinionated fact, that his mind was defective when not under the influence of liquor?

A. Well, I believe that he was.

Q. Well, now why?

A. Well, the condition that the man kept himself in all the time.

Q. You would believe then any man that would get drunk many times that there would be something wrong with his mind by getting drunk?

A. Well, I would think a man that stayed drunk nearly all the time his mind wouldn't be clear when he was sober.

Q. And that is the reason you think there was something wrong with his mind because you saw him drunk so many times?

A. I never believed his mind was right.

Q. That is the only reason you have for believing that because you saw him drunk so many times?

A. Really that would be the foundation of my belief.

## Examination.

By Mr. Currey:

Q. Well, when you say he was drunk there are a great many stages of that.

A. Intoxicated.

Q. Fellow takes one drink some people think he is drunk.

A. Yes, sir.

Mr. Currey: I am one of those unfortunates.

The Court: They get it by inheritance. Alcoholism affects some men, just a drink.

Mr. Currey: That don't hold out. For about five or six generations there has not been a drinker in our family and I  
304 can take one or two drinks and get as drunk as a  
boiled owl.

The Court: That may be way back.

Mr. Currey: It must be way back because there has not been anybody knew of it.

Q. Was there any change in his physical condition his face and manner?

A. Considerable yes, sir.

Q. Well what was it?

A. Well his face became drawn and he had a very disagreeable look the last few months that I knew him. So much so that one time he was at my place and my family were acquainted with him by his being there and they didn't recognize him. His face was haggard and drawn. He had a rather dissipated look about him. seemed to be his health was in the last stage.

Mr. Currey: That is all.

## Cross-examination.

By Mr. Ewert:

Q. Mr. Pottorff you are also a defendant in a number of suits in this court in which I am plaintiff?

A. I don't know how many, I have got some here.

Q. And are also plaintiff in some of these suits?

A. Yes, sir.

Q. Now the last statement you made was about two months before he died this change in appearance took place?

A. I didn't say two months.

Q. How many?

A. A few.

Q. What would you say a few was?

A. Well I would leave that for anybody to decide.

Q. Well you know best.

A. Well the last six or seven months I was referring from the first of the year, during 1918.

Q. Did he get worse in appearance towards the latter part of his life, say from July 11th on until November when he died?

A. I couldn't mention any date.

Q. When did that first change come during the year 1918 that you remember?

A. I don't know that I could just tell you.

Q. About when?

A. Latter part of 1917 and 1918 I suppose. When he married that second woman I met him at that time in a business way with her and the first time I met him he was intoxicated.

Q. But you took leases from him and thought he was all right?

A. No, sir.

Q. Paid him money?

A. I paid him money.

Q. Kept up your contract with him?

A. Yes, sir.

Q. You had a contract for the hay?

A. Not with him, with his wife.

Q. He transacted business for his wife and you paid him?

A. Well I paid him and her both. While she lived the checks were drawn to her.

Q. And you continued to do business with him right up to the time of his death in that manner?

A. Yes, sir.

Mr. Ewert: That is all.

Mr. Currey: That is all Mr. Pottorff.

(Witness dismissed.)

And thereupon HIRAM W. CURREY, produced, sworn and examined as a witness for and on behalf of the plaintiff testified as follows:

Direct examination.

By Mr. Thompson:

Q. State your name.

A. Hiram W. Currey.

Q. Where do you live?

A. I live at Joplin, Missouri, my law office is in Joplin.

Q. How old are you?

A. Well I am over forty.

Q. What is your business?

A. I am an attorney at law.

Q. Mr. Currey did you ever have any conversation with Mr. George Redeagle subsequent to the 5th day of July, 1918, concerning this stipulation we are now discussing?

A. Yes, sir.

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial.



The Court: Yes, he will not be permitted to testify what he has been told about that stipulation. That is hearsay.

Mr. Thompson: We only seek to show it, Your honor please, under the rule we are urging.

The Court: I have ruled on that.

Mr. Thompson: Note an exception please.

Q. Mr. Currey do you know whether as a fact a short time before this transaction Mr. George Redeagle turned his business over to other persons to manage for him?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, not the best evidence. Of course he just asked him whether he knows.

The Court: I think that calls for substantive testimony.

A. A short time after this, yes, sir.

The Court: If he knows of his own knowledge that is competent.

Q. What were the names of the parties?

A. Hicks and Estes; Mr. Estes is a young lawyer, I don't know whether Hicks is or not; they live at Pitcher. I saw the contract.

Mr. Ewert: Now just a moment.

A. I was there when the contract was executed.

307 Mr. Ewert: That is objected to as not the best evidence.

He is trying to work this in, Your Honor.

The Court: The fact that he turned his business over to a lawyer that will go in that far. Any terms or conditions that is not admissible; the contract is the best evidence.

A. It has never been in our possession.

The Court: I don't understand the rule to be that. You have to show that where it was usually deposited and a reasonable search was made for it.

A. We don't know it was deposited any where.

The Court: Well I will rule that is not competent the way the record is now.

Mr. Thompson: We were not urging this to show the contents, merely the fact that there was such a contract.

Q. Mr. Currey do you remember the date judgment was entered in this case?

A. Well I wasn't—the day the judgment was rendered yes because I wrote the journal entry.

Q. What day?

A. 4th day of March, 1918.

Mr. Thompson: I believe that is all, unless you have other matters.

A. There is another matter.

Q. Just state it.

Mr. Ewert: Well I prefer you to ask the questions so I will have an opportunity to object.

A. It is in regard to when I became acquainted with Redeagle and what I had to do with him afterwards.

Mr. Ewert: Ask the question please.

Q. When did you first know Redeagle?

308 A. I first saw George Redeagle on the train going down to Vinita when this case—when evidence was introduced in this case and the Bluejacket case, and I saw him at Vinita during the trial.

Q. When did you next see him?

A. The next time I saw George Redeagle to my best recollection never saw him but once after that after this time of this appeal—the next time I saw him I think was on the depot there at Miami. I saw him once but didn't speak to him; the next time I saw him was the day that he signed the appeal in this case.

Q. Now what time was that?

A. That was—I can't give the date, but it was about thirty or forty days before the expiration, probably forty days before the expiration of the six months from the 4th of March.

Q. Was Mr. Redeagle ever in your office?

A. Yes, after that time, not before that.

Q. Was he ever in the office before this stipulation was signed?

A. No, never was and Mr. Redeagle when I——

Mr. Ewert: Don't state anything as to the conversation.

A. When I saw him the day he signed the appeal he called me McCleary and had the wrong impression as to my name.

Mr. Ewert: We move to strike out what he called him or what his impression was as to his name.

The Court: I will let that go in.

Mr. Ewert: Exception.

Q. Where is your office in Joplin?

A. Between Fourth and Fifth—it is between Joplin and Main Street on Fifth Street in the court house building.

Q. Was that your office in July, 1918?

A. That has been my office since July 1, 1916 or 1917.

Q. Where was Mr. Ewert's office at that same time?

309 A. In the Frisco Building.

Q. And where is that with reference to your office?

A. The Frisco Building is on the corner of Sixth and Main on the east side and my office is about the middle of the block on Fifth.

Q. How many blocks between the two buildings?

A. Just the one block and across the street.

Mr. Thompson: I believe that is all.

A. What I want to testify in this record further is my experience

with Mr. Redeagle and as to his mental condition after this appeal was taken.

Mr. Ewert: Well I object to any remarks.

The Court: Very well. I will let him answer. You can move to strike it out afterwards.

A. After this appeal was taken in a very short time, I expect a week, Mr. Redeagle came in to my office one morning and said that he had been in town over night and wanted me to let him have money enough——

Mr. Ewert: I object to any conversation that took place between Mr. Currey and Redeagle, hearsay.

The Court: I will let this in.

Mr. Ewert: Exception.

A. And I gave him three dollars.

The Court: Can you fix this date?

A. It was during the week after I had been down here; I didn't come back to file the bond, I sent the bond down, but it was a week after the appeal signed by Judge Campbell, it was during that following week. He went away and in the afternoon he came back again. I had not noticed particularly his condition when he came in the first time. When he came back in the afternoon he  
310 was, from his appearance I took it that he had been drinking, and he said that he had got mixed up with some parties and wanted me to let him have a dollar; and I told him if he would take the dollar and go home I would give it to him. So I gave him a dollar. The next morning he came back to the office again and this time he was sober, but he was in a very nervous condition following the time he had been drunk. Now he undertook then to tell me that morning about an interest that he had in what was called the Alexander Mud estate, and I endeavored to get a statement of the facts. His conversation was so incoherent and so mixed and muddled that I couldn't discover his relation, whether it was his relation or through his wife's relation that he claimed to have an interest in this estate. Then I took him out and put him on the car and then gave him a dollar to go home and promised him that I would come down and talk his matter over with him or stop there the first time I went through. He came back to the office again in a few days apparently sober, and that time I spent an hour or hour and a half with him trying to find out whether he claimed the interest in this property through his own relation or whether it came through his wife.

Mr. Ewert: Now I move, Your Honor, I think this has gone far enough; I move the testimony be ruled out.

The Court: I will let him testify.

A. With the result that I was unable to find out enough about the property to even make an examination of it. He went away again

and said he would bring another Indian back with him and the two of them would tell me about it. Well he didn't bring the other Indian back but he came back twice after that and I talked with him and examined him as thoroughly as I could trying to ascertain the facts in regard to that case. Now the second or third time he came back he borrowed five dollars again and went out and got drunk and in the following morning he came back and a hackman came back with him and I gave the hackman five dollars to take him home. He went away with the hackman but late in the afternoon I discovered he was still in town and I again got him and put him on the car and sent him home. After the conversation I had with him in regard to the property I observed him very closely. He made frequent trips back and forth to the office some times sober and some times he was drinking. One time I remember, I think Mr. Lyons was there, when he came in the office when he was in a very bad condition. From these conversations that I had with him I feel safe in saying that it was my opinion that the fellow was not capable of caring for himself in any kind of a contract, that his mind was—practically had no mind. Now he came back just a short time before he died when he was sober. He had a hole cut in his hat; and I again talked to him, and he seemed to be in about the same condition. Of course when he was drunk he talked utterly silly. That is all.

Mr. Thompson: Take the witness.

Cross-examination.

By Mr. Ewert:

Q. Now all of these things you have related occurred after the appeal was taken in this case and that was about the 26th or 27th of August, 1918?

A. I don't remember the date; it was after the appeal was taken.

Q. Well you know what month you took that appeal in?

A. I don't recall the month; I know it was just awhile before the six months expires.

312 Q. The six months expired the 4th of September.

A. I expect that is right.

Q. All of these things occurred after that time?

A. Yes.

Q. You thought he was competent to sign the appeal bond and appearance bond?

A. That was the first time I seen him and I didn't see him more than ten minutes when I did see him.

Q. But you thought then he was competent enough to sign the appeal bond?

A. Well I didn't discuss it, I didn't think about it because I would have had him sign the appeal bond anyway.

Q. After that time you got him to sign some affidavits that you sent in to the Indian Office?

A. He made an affidavit yes, sir, he signed that under the superintendence of his attorney Mr. Estes and Mr. Hicks.

Q. Yes, but that was during the time you thought he didn't know anything?

A. He knew very little. An instance I can give you——

Q. I don't care about the instance.

A. I should like to be permitted——

The Court: Well after he gets through.

Q. You sent those affidavits in to the Indian Office didn't you?

A. Yes.

Q. You prepared the affidavit yourself didn't you?

A. No, I don't think I dictated the affidavit, I might.

Q. It was prepared in your office wasn't it?

A. No.

Q. You knew of its contents?

A. Yes, I saw him sign it.

Q. It was signed in your office?

A. No, sir, in Miami.

Q. In whose office?

A. Scott Thompson's.

Q. Associated with you in this case?

A. Yes, sir. Mr. Hicks and myself and the Indian and his wife were all there that day but Mr. Thompson wasn't there.

313 Mr. Ewert: That is all.

A. Now I would like to relate an incident.

The Court: Very well.

A. When that affidavit was being made to send to the Department Mr. Hicks was present, and after the affidavit had been made and signed Mr. Hicks told Redeagle that his affidavit would show——

Mr. Ewert: That is objected to as being hearsay in the extreme what Mr. Hicks told Mr. Redeagle in his presence.

The Court: I will overrule the objection.

A. Just as an illustration, that the affidavit would show he wasn't competent. So he said, well you write out then a statement that he wasn't competent when he was dealing with white men and trying to follow his suggestion a slip was written out of that character and attached to it. There were two little slips attached to the affidavit by reason of his suggestion after they had told him what they had thought the effect of his affidavit was. Didn't seem to have any knowledge of the meaning of the affidavit.

Q. And you sent it in to the Department?

A. Sent it to the Department and wrote a letter and told them of course I sent it to the department.

Q. I know you did; who gave you the facts in the affidavit?

A. I got the facts from what I knew myself and what he would

tell me in regard to the conversation he had had with you and what you had done and what others had told me about the matter.

Q. And then had him swear to it?

A. Yes we had him swear to it, did that to protect him from having that lease approved.

31 Mr. Ewert: All right.

Mr. Thompson: That is all Mr. Currey.

(Witness dismissed.)

Mr. Currey: That is all.

And thereupon the plaintiff having closed his case in chief the following evidence was offered by the defendant.

And thereupon IRA C. DEEVER, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. State your name, age and residence?

A. Ira C. Deaver, sixty-one years old, reside at Shawnee, Oklahoma. I am not quite as ashamed of my age as our attorney was here.

Q. And what is your present occupation?

A. United States Indian Superintendent for the Shawnee Indian Agency High School.

Q. Shawnee, Oklahoma?

A. Yes, sir.

Q. And how long have you been at Shawnee Agency?

A. Since May 13, 1918.

Q. What was your occupation or business prior to that time?

A. United States Indian Agent and Superintendent for the Quapaw Indian Agency from January 1, 1908, until April 31st, until March 31, 1918.

Q. And what were you during the two months from March until April, were you still employed at the agency up to the first of May when you left?

A. I was Special Supervisor for the government from April 31st—no from March, did I say April 31st I was there?

The Court: You corrected it.

315 A. March 31st to May 13th.

Q. What was your business and your official duties there in the Quapaw Reservation in respect to the Indians of the Quapaw Reservation?

A. I had supervision over their lands and trust properties.

Q. Was George Redeagle one of the Quapaw Indians?

A. Yes, sir.

Q. Did you have occasion to know George Redeagle during that period, let's see that is sixteen years?

A. Eleven years about.

Q. You became acquainted and knew George Redeagle now did you personally and well?

A. Yes, sir; I became very well acquainted with him.

Q. Just tell the court what you know about him, his competency and ability up to the first of May, 1918.

Mr. Currey: Wait a minute; that ought to be premised by his acquaintance.

The Court: How long had you known George Redeagle, when did you first know him?

A. I became acquainted with him shortly after January 1, 1908.

Q. Tell the court how often you saw him after that.

The Court: Well how many times did you see him a year?

A. Oh I expect forty or fifty times.

The Court: Now did you have occasion to talk to him about his allotment and royalties?

A. Many times; didn't have any royalties.

The Court: In what capacity did you talk to him?

A. As a government officer.

The Court: Did he come to you to advise with him?

A. He was at my office very often, sold other lands.

The Court: Now you may ask your question.

316 Mr. Ewert: Let me go into it a little more fully Your honor.

Q. Now how far is the agency building from where Redeagle lived?

A. About twelve miles.

Q. And did he frequently come to the Quapaw Agency to see you there relative to different Indian matters of his own?

A. Yes, sir, very often.

Q. And did you talk with him a good deal during those years?

A. Yes, many a time.

Q. Tell the court what you know of him personally as to his learning and ability and those things, beginning from the time you first became acquainted with him up to the time you last saw him in 1918.

A. I considered George Redeagle the most intelligent and educated Indian of the Quapaw Tribe.

Q. Did you have occasion to use him as interpreter?

A. Yes.

Q. Tell the court how you used him and what you thought of his ability and honesty.

A. Whenever I required an interpreter that I thought competent to tell me the truth I got George Redeagle. He was about the only interpreter I could really rely on to tell me the truth.

Q. And what was his ability as to interpreting?

A. Good.



Q. Was he accurate and coherent?

A. Yes.

Examination.

By the Court:

Q. When was the last time you saw him to talk to him?

A. Well I couldn't tell exactly, I suspect that I saw him some time during the month of April.

Q. April, 1918?

A. Yes, sir.

Q. You left there in May?

A. I quit on the 31st yes, sir, but I remained there during the time I was Supervising.

317 Q. You quit there as agent?

A. Yes, sir.

Q. On March 31, 1918?

A. Yes, sir.

Q. And you stayed as Supervisor until May 13, 1918?

A. I left a few days before the 13th, about May 5th.

Q. Now how long before you left there was it before the last time you saw him?

A. I remember seeing him once with Mr. Mayer, the present superintendent, and introduced them.

Q. Now from the time the first time you met him in 1908 up to the time you left there did you see any diminishing in his mental power?

A. Not when he was sober. He was a man addicted to drink and of course as he grew older he grew worse in his drink habits. When he was sober I didn't notice any difference in his mental capacity.

Q. You think when he was sober he was qualified to attend to his business?

A. Yes, sir, he knew exactly.

Examination.

By Mr. Ewert:

Q. Now during the early part of 1918 did the government, pursuant to law, classify the Indians of the Quapaw Agency into competent and incompetent Indians?

A. Yes, sir.

Mr. Currey: We object.

Mr. Ewert: He has answered.

The Court: I will overrule the objection for the present.

Q. Was George Redeagle—what did you recommend to the Commissioner of Indian Affairs that a certificate of competency be issued to him at that time?

Mr. Thompson: Objected to as leading and suggestive.

The Court: Oh that is a matter of record, that won't hurt what he did.

318 A. No I did not recommend to the Secretary of the Interior. At this time when I was Supervisor the attorney from the Indian Office named Hull and the Superintendent Mayer were classifying these Indians, and as I had been there a number of years and had been to all their houses I knew them just as I knew their families, and they entrusted to me to designate the Indians who could manage their own affairs.

The Court: When was this?

A. This was along in April, 1918.

The Court: But you recommended to them that they put him in the competent list at that time?

A. Yes, sir, a competent list was presented to Mr. Mayer and Mr. Hull by me and I wrote up a memorandum.

Mr. Currey: Your Honor, it doesn't seem to me that throws any light here.

The Court: I do, Colonel. This is along about that period. Well now if incompetency is presumed to continue competency would be too, if you show he was competent at that time, if you establish the status that presumption would be there.

Mr. Currey: But that wouldn't establish it.

The Court: He swore in his judgment he was competent then and he recommended to this supervising board that they put him in the competent list and he is the Indian Agent; I think that is competent as a circumstance in connection with all the circumstances to be considered. I think they would be permitted to prove that the government classified him after investigation and put him in the competent class, I don't know whether they did or not.

Q. You have stated about the home life, tell the court what kind of a house George Redeagle had.

319 A. Formerly in early days he had the best residence of any Quapaw Indian on the reservation. Had a fine two story residence, well built and well improved; piano in his house, carpets on his floors.

Q. How about his barn and out buildings?

A. They were the same class.

Q. Did he have some stock?

A. Cows, horses and pigs.

Q. What about him as a worker?

A. Well he wasn't much of a worker. He farmed a little patch around his homestead like a great many white men; as far as that is concerned he had so much stuff he didn't have to work.

Q. Had a thousand acres?

A. A great many.

Mr. Ewert: I ask the reporter to mark the paper I am handing him Defendant's Exhibit #2. I now desire to offer in evidence certified copy—

The Court: Show it to the other side.

Mr. Ewert: This is a certificate by the Department of the Interior.

(Reads:)

The Court: What is the date of that?

Mr. Ewert: April 5, 1918.

The Witness: May I qualify my statement in regard to that?

Mr. Currey: Wait a minute.

Mr. Ewert: I am not through with the witness.

Mr. Currey: We suggest to the court that this is not proper evidence to be considered in determining the competency of this Indian to make the transaction. We want the court to understand we are not conceding it is necessary to show incompetency in order to justify the court of appeals in overruling the motion to dismiss the appeal now pending. This is no more than the recital of a judgment between third parties, and the court is not advised as to the testimony on which it was made and would not affect this transaction whether it was on sufficient or insufficient testimony.

The Court: Very well, I will permit that to be introduced. Now you can qualify your answer.

A. I notice this is dated April 5th. That shows it was recommended while I was Agent. Others were recommended after I was Supervisor, but since that is dated the 5th it must have been one I recommended because it couldn't have gone to Washington and been acted upon in that short time from March 31st to May 5th.

Mr. Ewert: And defendant now asks to have paper marked Defendant's Exhibit #3, consisting of two pages, same being a certified copy of order for the removal of restrictions upon certain of George Redeagle's allotment of land, the same being dated September 27, 1918, together with the recommendation of the Department, and offer the same in evidence together with the foundation therefor by the Department.

Mr. Currey: We object to that for the reason that it would not and could not assist the court in making findings and certifying to the situation and relations of the parties at the time the instrument involved in this case was signed by Redeagle in the form of a compromise of a suit pending in this court.

The Court: The objection will be overruled. It will be permitted to go in the evidence.

(And thereupon Mr. Ewert read the instrument offered to the court.)

321 Q. Mr. Deaver prior to the time that you entered upon your duty as Superintendent and Disbursing Agent for the Quapaw Agency what was your business?

A. United States Indian Superintendent for the Yuma Indians.

Q. In Arizona?

A. In California just across the river.

Q. You may state to the court whether or not during that time you had opportunity to observe—state whether or not there were any users of this Peyote?

A. I observed that more in the Quapaw Agency than any other place.

Q. What did they call that in the Quapaw Agency, taking medicine?

A. They had a kind of religious rite and they claimed it would kill the taste for strong drink and if they drank while they were using that that it would kill them, and it seemed to have that effect among some of them. If they joined that Peyote Church they would quit their drinking.

Q. Did you have an opportunity to observe those whom you knew to me users of Peyote?

A. Yes, sir.

Q. Did it ever affect any of those Indians injuriously?

A. Like most any kind of a jamboree if a man would stay up all night and drink and carouse around until the next day he probably would have a headache afterwards.

Q. But you observed no injurious effect?

A. No.

Q. You have stated you had an opportunity to observe George Redeagle, did George Redeagle ever indulge to your knowledge in the use of this Peyote?

A. No, sir, he was always opposed to that. He was always reciting that these other fellows were Peyote eaters and he didn't.

Q. Told you he didn't?

A. Yes, sir. Of course I don't know whether he did or did not, but he has often told me.

The Court: He belonged to the drinking crowd?

322 A. Yes, sir, George Redeagle was a drinking man.

The Court: He was improvident?

A. Yes, sir.

Q. And at that Mr. Deaver did he ever have the restrictions removed from any of his allotment?

A. No, sir, he didn't have the restrictions removed from any of his own lands.

Q. And kept those up to the time of his death, with the exception of his inherited lands?

A. I suppose so, I wasn't there.

Q. At the time of his death he still had 400 acres of inherited land?

Mr. Currey: That is objected to as leading.

The Court: That is leading.

Q. And during all the time he was at the agency did he manage and control his own property?

A. Yes, sir.

Mr. Currey: We object to stating what he done. That don't mean anything.

Q. Did you ever observe anything in George Redeagle up to the time you left there that indicated that he was mentally weak or anything of that character?

A. No, I never thought he was mentally weak; he was a drunkard. He was like all drunkards he wasn't fit to do business when drunk.

Q. When he was drunk?

A. When he was drunk.

Q. When he was sober state whether or not he was?

A. When he was sober he undoubtedly knew what he was doing; he was educated and intelligent.

Mr. Ewert: You may take the witness.

Cross-examination.

By Mr. Thompson:

323 Q. Mr. Deaver this competency report by the department was based on information you sent in?

A. That last one no, sir. The other one was one I must have sent in, that one dated April 5th must have been transmitted by me; but the other one removing restrictions was long after my time; I had nothing to do with that, know nothing about it.

Mr. Ewert: That is the report of the present Superintendent?

A. Must have been, it wasn't my report.

Q. Well you don't know who reported that?

A. No, sir, that is the first I knew of it.

Q. This order here that has been shown and identified as Defendant's Exhibit #2 that is the order declaring him competent, that was your own judgment rather than the judgment of your associates was it?

A. Yes, that was my judgment; they didn't know because they hadn't been there long enough.

Q. Did you make any investigation other than your own general knowledge?

A. I had known him personally for ten or eleven years saw him often.

Q. Had you had any business transactions with him prior to that time within a reasonable date, and if so what was it?

A. Well I don't know that I had any business transactions other than not so very long before that his only daughter was endeavoring to have her land sold and he frequently advised with me to not let her sell it she would spend it.

Q. That was Josephine?

A. Yes, sir.

Q. When did you gather the information or make the report from which this order was made?

A. Well from my general knowledge of George during the term of ten years.

Q. And you made the report during April or May?

324 A. No, that report was made in March because the date is April 5th, must have been made in March during the time I was superintendent.

Q. This is dated April 5th.

A. Yes, April 5th. I made the first of those while I was Superintendent and a great many after, went over the business with them; from the date of that I must have transmitted that myself.

Q. As a matter of fact you made those recommendations not from any personal investigation but your general knowledge?

A. My knowledge from ten or eleven years' experience.

Q. And in your judgment in April, 1918, George Redeagle was as competent as he was when you first knew him?

A. He was competent as far as his mentality was concerned, but he had become more of a drunkard.

Q. And become more improvident had he not?

A. Yes.

Q. Did you recommend, Mr. Deaver, as a part of your report, that he was a carpenter and a farmer?

A. That isn't in my report.

Q. Is that a fact?

A. I couldn't tell you.

Q. Well you knew him for ten years.

A. Yes, I never knew him to be a carpenter.

Q. Did you ever know of him to do any work?

A. Yes, he attended to a garden spot around his house and had ten acres he attempted to cultivate.

Q. Did he do the work himself?

A. Some times he would do a little and the boys would do a little; he wasn't a worker.

Q. You never heard of him being a carpenter did you?

A. No, sir.

Q. You stated he had a very fine home as an Indian home?

A. Yes, sir.

Q. What was the occasion for selling this land and building another home, do you know?

325 A. I think that says to improve and repair.

Q. As a matter of fact this home you speak of his having was a former wife's home?

A. Yes, it was on her allotment.

Q. And built with her money?

A. I couldn't say but I believe George built it himself from lands he had sold before or his wife in some way. It was erected before my time and before the government undertook to supervise these buildings. He did that himself.

Q. The home you speak of was on his wife's allotment?

A. Yes, sir.

Q. Was he living there when he died?

A. I don't know.

Q. Do I understand you — say during all this ten years you used this man as an interpreter?

A. No, I say I occasionally used him.

Q. Well did you occasionally use him in the last few years that you knew him?

A. The last time I remember really using him was about six months before that in June 1917. We always called the Quapaw

council to approve a contract which provided \$1,000 educational funds. I remember using George as an interpreter at that time.

Q. Do you remember using him after that time?

A. No, I don't know that I do.

Q. Isn't it a fact, Mr. Deaver, in the last year and a half or two years of George's life that he was not used as an interpreter as he had been used prior to that time because of his habits?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: I believe you remember having used him in June, 1917?

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A. Yes, sir.

Q. I am now asking you if it isn't a fact from general information you had as Indian Agent that he was not generally used because of his habits and his weakened intellect?

A. No, when George was sober I think George knew what he was doing.

Q. When you were doing your investigating with Mr. Howell you didn't use George Redeagle as interpreter did you?

A. No, we didn't have him with us; they used Jim Valley because he was in the government employ, he was government blacksmith; he had never been used before.

Q. Mr. Deaver do you want to make the record clear that in your judgment, your opinion, the last few years of your official life up there that George Redeagle had not weakened physically as well as mentally and become almost a degenerate?

A. Well a man that is drinking almost all the time is weakened physically, but during his sober hours he was all right, always knew what he was doing, any man white man or Indian I don't think there is any difference in regard to that; he had been drinking a number of years and of course it was injuring him.

Q. I think you have testified that you saw him possibly forty or fifty times during the last year you were there?

A. Did I say the last year, I said during the years; he asked me how many times a year the whole time I was there.

Q. You would see him on an average once a week?

A. Yes.

Q. Now during the last two years of that period how many times would you say Mr. Deaver that you saw him sober?

Q. Well during the last two years I didn't see him as often as previous; he had married, his second wife had died and he was spending a good deal of his time around Joplin. When he was married to Julia he used to come down there often and I

327 would drive up in that country often.

Q. You say a good part of that last year you knew him he spent around Joplin?

A. Well yes; he spent a good deal of his time.

Q. Then that would be a year prior to April, 1918?

A. Yes, do you know when his second wife died?

Q. No.

A. It was before I left there.



Q. And you think Redeagle was above the average in April, 1918, average Indian in intelligence?

A. Well I said Redeagle was above the average intelligence of Quapaw Indians.

Q. At what time Mr. Deaver?

A. Well most of the time that I knew him.

Q. Well was he when you made this recommendation in April, 1918?

A. Yes, I think he was intelligent. When he was sober he knew just exactly what he was doing just as well as you all. When he was sober and signed a contract I think he knew as well as you or I do, but he was improvident he wanted the money and he would sign it.

Q. That is he would squander his estate if he was thirsty?

A. Yes, it made him improvident but he knew what he was doing.

Q. And with that knowledge in your possession you recommended to the department he be placed on the competent list did you?

A. Yes, sir, because he knew exactly what he was doing. I figured it this way, a drunken white man was in the same condition, he was smart enough; I didn't think just because he was a drunkard he ought to be protected.

Mr. Thompson: That is all.

(Witness dismissed.)

328 And thereupon S. J. McCLEARY, produced, sworn and examined as a witness or an on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. State our full name and age.

A. S. J. McCleary, forty-seven years old.

Q. Where do you live now?

A. A mile south of Douthit, Oklahoma.

Q. Is that in Quapaw Agency?

A. Yes, sir.

Q. How long have you lived there?

The Court: You mean he lives in Oklahoma?

Mr. Ewert: Yes.

Q. How long have you lived and resided there south of Douthit?

A. One year.

Q. What is your business?

A. Farming.

Q. Where did you live prior to the time that you moved to this place to farm?

A. I lived on Spring River east of there about four miles.

Q. On whose farm?

A. Mr. Ewert's farm.

Q. How long did you live there?

A. Six years.

Q. Where is Mr. Ewert's farm located with respect to George Redeagle's home?

A. Well, it lays east of George Redeagle's home.

Q. Joins it on the northwest corner?

A. On the Southeast corner.

Q. George Redeagle's home is a quarter of a mile from where you lived?

A. Yes, sir.

Q. How long did you live on Mr. Ewert's farm?

A. Six years.

Q. Did you during that time see Redeagle a good deal?

A. Oh yes, our mail boxes was right together and I saw him often.

329 Q. During that time did you employ him?

A. Yes, sir, I had him working for me some.

Q. What did you have him working at?

A. He cleared off some land and helped me harvest and thresh.

Q. That continued up to the time you left there; what date did you leave the Ewert farm?

A. Well 1918.

Q. Spring of 1918?

A. Spring of 1918.

Q. And tell the court what kind of a worker he was?

A. He was an awful worker what little time he worked for me; he was the greatest fellow to pitch wheat; of course he didn't work for me very long.

Q. What was he with respect to strength physically?

A. Oh gosh, he was a stout man.

Q. Was he able-bodied physically during that time?

A. Seemed like he was.

Q. Did you talk to him frequently?

A. Talked to him every day or two.

Q. Tell the court what you think of him or what you know of him as far as his ability is concerned.

A. Well——

Mr. Currey: I don't think the witness is competent to express an opinion yet.

The Court: He said tell him what he knew of him.

Mr. Ewert: Yes, sir, his ability. Answer the question.

Mr. Currey: I don't think that is the question if the court please.

Mr. Ewert: Well then I will ask it now.

Q. Tell the court what you know of his ability mentally.

A. Well he lived there and farmed a little.

Q. Did he have some stock?

A. Had a team, cows and stuff like that around him.

330 Q. And you say you talked with him; did he speak intelligently?

A. Oh yes.

Q. What about his apparent education?

A. I would talk to him about every day. There would be days he would go to town things like that you know.

Q. Tell the court what his ability was mentally compared to the ordinary run of folks in that locality.

Mr. Currey: We object to that; the witness hasn't detailed enough of his association with the man to be able to have any knowledge.

#### Examination.

By the Court:

Q. Well he can testify. How often would you see him, once a week?

A. Yes, three or four times a week I expect.

Q. Did he read and write, do you know about that?

A. Oh yes he was pretty sharp on that, sharper than I was.

Q. Well state whether or not he was a man of ordinary intelligence?

A. Yes, I think he was. Some times he would be drinking a little, but I never could do no business with him when he was drinking.

#### Examination.

By Mr. Ewert:

Q. Now in your observation of him during the years say 1916 and 1917 tell the court.

A. I remember in 1917 there for five or six months I would judge that he quit drinking entirely. I never saw him drink at all. Said he had quit, said he was going to make a man of himself and quit. Then once in awhile after that oh I would say once a month he would go to town and come back drinking. Some times he

331 would come to my place when he would come back home.

The Court: Now during that period did you ever see anything about him that called to mind that there was any deficiency in his mind, that his mind was failing?

A. No, sir, I never could see no difference in him when he was sober.

The Court: Go ahead.

Mr. Ewert: That is all.

#### Cross-examination.

By Mr. Thompson:

Q. Mr. McCleary you are living south of Douthit now?

A. Yes, sir.

Q. And when did you move from the Ewert farm?

A. Spring of 1918.

Q. How long were you on Ewert's farm?

A. Six or seven years.

Q. Do you owe Mr. Ewert anything now?

A. Owe him anything?

Q. Yes.

A. No, sir.

Q. How long did Redeagle work for you?

A. Oh just worked about every summer while I was there.

Q. Just in the harvest?

A. Well he cleared some there two or three different springs.

Q. How many days did he work for you?

A. Oh week at a time.

Q. What did you pay him for the work?

A. Paid him two dollars a day in the harvest and his board.

Q. Over what period of time would that harvest go?

A. Oh run about a week, stacking it would run a little longer than that.

Q. Is that all the work he ever did for you?

A. Except the clearing.

Q. You have known him for six years?

A. Yes, sir.

332 Q. What other work did you know him to do?

A. He would work every once in a while hauling posts.

Q. He was a carpenter, wasn't he?

A. Kind of a jack-leg carpenter.

Q. When did he do any carpenter work?

A. He put one shed on his barn, looked pretty good.

Q. Did he do any carpenter work for hire?

A. Well no, not that I know of.

Q. You say he hauled posts?

A. Yes for some of those fellows over there.

Q. Do you remember when he did that?

A. Well about every summer I think.

Q. Can you indicate who he was hauling for?

A. Well I think he hauled some for Ora Hampton.

Q. When was that?

A. The year before I moved away.

Q. 1917, that was during that period he was sober?

A. No, it was 1918, the year I left there.

Q. When did he haul for Ora Hampton?

A. I think the last summer I stayed on the place.

Q. You stayed on Ewert's place in 1918?

A. Yes, moved away in the spring.

Q. Well then you were not there in the summer were you?

A. Yes.

The Court: If you moved away in the spring of 1918 you couldn't have been there in the summer of 1918, spring comes before summer.

A. This is 1919, I have been on Maben's place one year.

Q. You moved there in 1918; this is April 1919 now?

A. Well I moved the first of the year.

Q. That is you moved in January did you?

333 A. Two weeks after the first of the year.

Q. During the month of January, 1918, you moved from the Ewert farm to Maben's farm where you now live?

A. Yes, sir.

The Court: So the last harvest you had on the Ewert farm would have been 1917; you didn't have any harvest there last year?

A. No, I didn't have any harvest there; that was the summer he quit drinking.

Q. That was the summer he hauled the posts for Ora Hampton?

A. Yes, he worked out quite a bit.

Q. What other work did he do?

A. Oh I could see him working with a team hauling posts. Lots of times I would never ask him who he was working for.

Q. How many times did you see him hauling posts?

A. Oh I don't know as I could tell you the amount of times.

Q. How many times have you seen George Redeagle since the time you moved from the Ewert farm?

A. Well I haven't saw George but a few times.

Q. Where did you see him?

A. Baxter.

Q. Sober or drunk?

A. Sober when I saw him.

Q. And what time of the year was it?

A. Last summer.

Q. Summer of 1918?

A. 1918.

Q. Was that before he married this last woman?

A. I saw him just a few times after he married this last woman.

Q. And you saw him sober?

A. Yes, sir.

Q. Where was he?

A. In Baxter.

Q. Was the woman with him?

A. No, sir.

Q. You know how he lost his life?

A. Well I heard some about it.

Q. He was burned wasn't he?

A. I learned that in the paper.

334 Mr. Thompson: That is all.

Mr. Ewert: That is all Mr. McCleary.

(Witness dismissed.)

And thereupon PAUL A. EWERT, having been first duly sworn as a witness for and in his own behalf, testified as follows:

Mr. Ewert: My name is Paul A. Ewert; I am defendant in this action. I am forty-eight years of age; reside now in Joplin, Missouri; have resided there since the summer of 1910, August, 1910. I came to Ottawa County, Oklahoma, in the fall of 1908. I am

well and personally acquainted with Redeagle. I was in the government employ from early in November, 1908, until the 8th day of August, 1912. I had a sort of government office in Miami, Oklahoma, up to the first of August, 1909 I think. I got acquainted with George Redeagle some time I think in the summer of 1909, possibly early in the summer, April or May. I have known him from that time up to the time of his death. While I was in the government service I frequently used him as interpreter and the government paid him a salary for that work, or a per diem for that work. And I know him to be a man far above the average Indian's ability and I think the ablest Indian in the Quapaw Agency of the older Indians who haven't had the opportunities of recent educations. He wrote a good hand, interpreted clearly and was a man of unusual ability, even above the average of white men. I was acting as one of my attorneys in the trial of this *trial* at Vinita in the spring—

The Court: Who was the other attorney that acted for you?

335 Mr. Ewert: Well Mr. Kornegay of Vinita assisted me somewhat at that time. That was in April, 1917, I think and George Redeagle was present in court at the time of that trial.

Mr. Currey: We object to this any further; it is incompetent and immaterial, doesn't tend to throw any light on the issue.

The Court: I don't see the competency. Proceed.

Mr. Ewert: I resigned this service in 1912 and did a good deal of legal business for Redeagle in small matters and was his attorney in fact at the time this suit was instituted. I think he retained me at that time to institute a replevin suit against Mr. Jones, who testified here this morning, to recover his piano which Mr. Jones had. At the trial of the case Judge Campbell indicated at the beginning of the suit—

Mr. Currey: Wait a minute. Now we object to the statement of what took place in the trial. We don't care.

The Court: Well I don't see it is competent but I will let him take his own course.

Mr. Currey: And Judge Campbell then stated that in his opinion the petition didn't state facts sufficient to constitute a cause of action and stated he would dismiss the suit. I stated to the court that in view of the fact that the petition alleged certain things which were false as a matter of record possibly if he dismissed the suit the appeal would go on the petition and the things charged stand admitted, and I asked him not to dismiss the suit and to force the defendant to prove his case and prove the allegations. They didn't put Redeagle on the stand although he was in court. After the trial—

336 The Court: What witnesses did they put on the stand?

Mr. Ewert: They didn't put on any except one or two witnesses to prove the value of the use and occupancy, but no witness on the main charge.

Mr. Thompson: If the court please—

The Court: It might be a matter in explanation of the letters. He is attorney and one of the parties.

Mr. Thompson: Of course as a matter of fact the record we have in this court shows that Redeagle was used as a witness.

Mr. Ewert: Not in this case.

Mr. Thompson: The transcript as filed in the court of appeals exactly contradicts.

The Court: Very well, that is in your favor then if he states a thing although it is immaterial I will let you contradict it.

Mr. Ewert: He was put on in the Bluejacket case but not this one.

Mr. Currey: Let me explain—and he knows it—the record shows that by agreement of counsel the testimony was taken in the Bluejacket case to be used in both cases and the journal entry of the court so recites.

The Court: Well you can introduce that if you want to.

Mr. Ewert: And I will state that his testimony was used only as to the Bluejacket case, not his own case at all. After the close of that trial Redeagle came to me—

Mr. Currey: We object to his making any statement about what Redeagle said. Redeagle is dead.

The Court: Yes, I didn't permit them to testify any state-  
337 ments which the dead man made and you can't do it.

Mr. Ewert: That is right, Your Honor. Right after Judge Campbell signed and filed the opinion on March 4, 1918, George Redeagle came to my office again relative to making a settlement.

The Court: You can't testify to that.

Mr. Ewert: Came to my office after that—

Mr. Currey: Of course we object to his testifying to any transaction he had with him.

The Court: Yes, you can't testify to any transaction that is incompetent under the statute.

Mr. Currey: Not only incompetent under the state statute but under the Federal statute.

Mr. Ewert: I wasn't going to detail any conversation, Your Honor.

Mr. Currey: I am objecting to his stating the transaction.

The Court: It is probably competent for him to say he came to his office, but he couldn't testify what he said or any transaction he had. Coming to the office is a physical fact, I think that is competent.

Mr. Ewert: And in April, 1918, under date of April 29, 1918, I wrote him a letter.

Mr. Currey: Now wait a minute. We object to him making any statement of what he wrote to Redeagle because Redeagle is dead and we can not show Redeagle's version of it.

Mr. Ewert: And I have served on counsel a notice to produce the original of that letter dated April 28, 1918, and in the notice to produce served upon counsel, which is a matter of record here, I  
338 have asked that they produce the original of that letter.

They have not produced it and I therefore ask the reporter to kindly mark this paper Defendant's Exhibit #4.

The Court: They did produce certain letters.

Mr. Ewert: Yes, but not this one.

Mr. Currey: We produced all we had, Your Honor.

The Court: I don't think he testified to that. I don't think you



can testify to that; I am inclined to think that is a transaction with a dead man. It looks to me it would be as much as a conversation with him.

Mr. Currey: Absolutely.

Mr. Ewert: Well I can prove this by my clerk who is here.

The Court: Very well.

Mr. Ewert: As to Plaintiff's Exhibit #6, dated January 17, 1917, addressed to Julia Crow Redeagle, Baxter Springs, Kansas, I desire to say that this letter—

Mr. Currey: Wait a minute. We object to any statement he wants to make in regard to the letter because it is incompetent and irrelevant, the letter speaks for itself, and because it is part of the transaction with a dead man.

Mr. Ewert: This letter is addressed to Julia Crow Redeagle, I have a right to explain what these letters are, Your Honor, that they were not written for sinister purposes.

The Court: I am inclined to think this isn't competent for you to explain anything about that. You couldn't testify as to any conversation you had with the dead man. Now if you explain this he ain't here to come back and face you on the explanation. I  
339 am inclined to exclude this. Of course questions like this ought to be looked up and you ought to have authorities. The way I understand the law this ain't competent.

Mr. Ewert: An improper inference, Your Honor, might be drawn from that letter and I have a right to think it being addressed to Julia Crow Redeagle, not a party to this suit.

Mr. Currey: Who is also dead.

Mr. Ewert: Who is also dead.

The Court: Well she isn't a party to the suit; I don't think it goes that far.

Mr. Currey: Well I think it does.

The Court: Well I will hear you on that. (Reads from law book.) Now who are the parties to this transaction?

Mr. Currey: The heirs of George Redeagle, three children.

The Court: Well now why couldn't he testify about a letter he wrote to the wife of this man who is dead?

Mr. Currey: Well it is the same as if he had written the letter to him. It is the same letter I read in evidence.

The Court: I don't see how that got in here.

Mr. Ewert: I objected to it at the time.

(And thereupon the court quoted from an opinion)

Mr. Currey: Our theory is the letter shows on its face it was written for George Redeagle; the purpose of the letter is shown that it was to reach the ears of George Redeagle.

Mr. Ewert: I want to testify why the letter was written.

340 The Court: Just a minute. (Reads from decision.) I will let him testify.

Mr. Ewert: May the record show in explanation of this that I

know of my own knowledge that Julia Crow Redeagle died prior to the death of George Redeagle plaintiff in this suit. This letter, Plaintiff's Exhibit #6 is a letter written to her by me and mailed——

Mr. Currey: I object to his explaining his language.

The Court: I will let it go in and you can move to strike it out after he testifies.

Mr. Currey: All right.

Mr. Ewert: And I have letters——

The Court: I didn't understand that statement.

Mr. Ewert: This Julia Crow Redeagle upon whose land I had a mineral lease at the date of this letter, and the money on the lease was payable at my office and up to the date of this letter——

The Court: Now was that a written lease?

Mr. Ewert: Yes.

The Court: You can't testify what the terms of that were.

Mr. Ewert: I am not going to.

The Court: You say it was payable at your office. I will exclude that. If you want to introduce that you must introduce a copy of the lease.

Mr. Ewert: Was written that she might come to the office where I might pay her money on the mining lease.

The Court: If you want to I will let you introduce the original of that lease or if it was filed in any department as a departmental lease I will let you introduce a certified copy.

341 Mr. Ewert: Unfortunately I haven't a copy. And up to the date of this letter, January 17, 1917, I had never had any correspondence with Redeagle——

Mr. Currey: Wait a minute.

The Court: That is excluded, that he never had any correspondence with Redeagle.

Mr. Ewert: May I state my position in this? They have introduced this in evidence. I am not introducing it. Now would it be permissible to permit these men, as they might try to do and as they have indicated they shall do, to argue that this letter was written to Redeagle for the purpose of getting him up to the office, as he says to have him come up there? Now can they introduce this letter and themselves make it a positive matter of evidence and permit no explanation and let them draw inferences?

The Court: I am inclined to think so, so far as it affects Redeagle.

Mr. Ewert: But I have testified, Your Honor, that I knew Julia Crow Redeagle died prior to the death of George Redeagle and therefore she was not an heir and not a party to this suit.

The Court: I will let you testify as to transactions with her. Now you want to testify you had never written him a letter. Now you can't do that.

Mr. Ewert: May I make my record?

The Court: Yes, make your record.

Mr. Ewert: Defendant offers to prove by himself that the letter, Plaintiff's Exhibit #6, was written under date of January 17, 1917.

342 to Julia Crow Redeagle, upon whose land Ewert had a mining lease and upon which money was due. That prior to the date of said letter Ewert had had no conversation with Redeagle concerning any settlement of the suit and had written him no letter concerning settlement and that there was no purpose in writing the letter except to have Julia Crow Redeagle call at the office and procure the lieu moneys due under her lease.

Mr. Currey: To which we object.

The Court: Now the defendant will be permitted to testify as to matters pertaining to Julia Crow Redeagle's lease, but not permitted to testify that he had no conversation prior to that time with Redeagle, nor that he hadn't written him any letters, because the heirs of Redeagle are adverse parties in this action.

Mr. Ewert: In order that that may be clear, Your Honor, the testimony shows that Julia Crow Redeagle died prior to the death of George Redeagle.

The Court: That don't make any difference when she died.

Mr. Ewert: She has no interest in the estate and they have offered a letter, themselves offered the document—

The Court: I have permitted you to testify that you had a lease on the allotment, a mining lease on the allotment of Julia Crow Redeagle, and that there was lease money due her. I will permit you to testify that. That is as far as you can go.

Mr. Currey: He has already testified to that.

The Court: Yes.

Mr. Ewert: As to Plaintiff's Exhibit #3, being a letter dated August 1, 1916—will the Clerk give me the date when this  
343 petition was filed?

Mr. Currey: Now that is a letter addressed to George Redeagle and signed by Paul A. Ewert. We object to him making any statements in regard to it.

The Court: Yes. He can make his offer if he wants to. You all had the same right, I permitted you to do it.

Mr. Ewert: Defendant offers to show by the testimony of himself that the letter, Plaintiff's Exhibit #3, was a letter written to George Redeagle asking him to call at his office in Joplin by reason of the fact that Ewert had been retained by the heirs of Charles Quapaw Blackhawk to institute a suit against Scott Thompson and Vern Thompson for the purpose of recovering royalty moneys due to him under and by virtue of a decision of the Supreme Court in the case of Noble v. Scott Thompson, et al., and has no reference to the subject matter of this suit. That George Redeagle was the person used as interpreter by Scott Thompson and Vern Thompson in making the statement—

Mr. Currey: I am objecting to that offer.

The Court: He has the right to make the offer.

Mr. Currey: Under the rule that that which gets in the mind stays there.

Mr. Thompson: I don't understand the gentleman is offering to testify himself.

The Court: Yes, sir.

Mr. Thompson: I want that understood.

The Court: Yes, sir, he is offering to testify that himself.

Mr. Ewert: Of the suit decided by the Supreme Court  
344 and the letter was written for the purpose of getting these  
facts from George Redeagle in order to get the evidence to  
prepare the petition to recover these royalties.

Mr. Thompson: Now, your notes show that the witness is offering  
to testify that himself?

The Reporter: Yes, sir.

Mr. Currey: We object, of course.

The Court: I will not permit you. If he brought a suit involving  
this in the Blackhawk matter I will permit him to prove that. But  
not to state the purpose that you had in writing or any dealings you  
had with this man about it. If you want to show you were em-  
ployed in the Charles Blackhawk case you may testify you were and  
who employed you and if you brought a suit you may show that.

Mr. Currey: I think the record will be the best evidence.

The Court: He don't have to introduce that record; that is an  
independent proposition.

Mr. Thompson: I can't agree with Your Honor; I would like for  
the gentleman to testify whether he did bring such a suit.

Mr. Ewert: Plaintiff's Exhibit #3 is a letter—

Mr. Currey: Wait a minute, I thought he was testifying.

Mr. Ewert: I am going to testify what the court permitted.

The Court: When he gets it in you may make a motion to strike  
it out.

Mr. Currey: He is not offering to make proof.

The Court: He is not going to make any proof contrary  
345 to my ruling.

Mr. Ewert: Prior to August 1, 1916, the date of Plaintiff's  
Exhibit #3, I had been retained by all the heirs of Charles Black-  
hawk to institute a suit against A. Scott Thompson and Vern Thomp-  
son to recover the royalties which the Supreme Court of the United  
States held to be due to Blackhawk under the decision in the case  
of the United States v. Noble.

Mr. Thompson: Your Honor please, now he is stating as to what  
the Supreme Court of the United States held.

The Court: Oh, that is immaterial.

Mr. Thompson: They didn't hold any such thing.

Mr. Ewert: And the letter was written to George Redeagle by  
reason of the fact—

The Court: No, you will not be permitted. I will let you testify  
you had been employed in that Blackhawk matter and that lets  
it stand there. The inferences draw themselves.

Mr. Ewert: I will stop right there then, Your honor. I don't  
want any wrong inferences as to why that letter was written. Your  
Honor, under the rulings of the court I ask to be released at this  
time until I can introduce competent evidence by my clerk.

The Court: Is there any objection?

Mr. Thompson: We have no objection.

(Witness dismissed.)

And thereupon CORA HALLAM, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

346 Direct examination.

By Mr. Ewert:

Q. State your name.

A. Cora Hallam.

Q. Miss Hallam state your present occupation.

A. I am employed by Mr. Ewert in Joplin, Missouri, as clerk.

Q. And how long have you been employed in the service of Mr. Ewert?

A. I think I commenced to work for Mr. Ewert August 1, 1916.

Q. A little louder.

A. August first, I think; it may have been the second.

The Court: 1916?

A. Yes, 1916.

Q. And if you don't mind state approximately how old you are.

A. I am thirty years old.

Q. And what were your duties there in the office of Paul A. Ewert in Joplin?

A. Well, I write all letters; Mr. Ewert dictates them and he signs them and I attend to the mailing of them; sometimes he mails them and sometimes I do; and I have charge of the files and books.

Q. I show you Defendant's Exhibit #4 and ask you what that is.

Mr. Currey: Now wait a minute. If that is a letter or copy of letter addressed to George Redeagle, deceased, we object for the reason that the testimony of the witness shows that she was the agent of Mr. Ewert and as much excluded from testifying as the defendant himself.

The Court: I don't understand that to be a rule.

Mr. Ewert: She is not a party in interest, Your Honor.

The Court: I would like to see your authority on that, Colonel.

347 Mr. Currey: What is the language of the act? I think the Federal Statute controls this.

The Court: Well if there is a Federal Statute I would be glad to see that.

Mr. Currey: Well I say I don't carry all the books around in my head, I know there is a Federal Statute.

The Court: I will let her testify. I will exclude it if you find it.

A. This copy, marked Defendant's Exhibit #4, is a carbon copy of a letter dated April 29, 1918, addressed to Mr. George Redeagle, Baxter Springs, Kansas, R. F. D.

Mr. Currey: The letter itself shows what it is I assume. I object to her reading the letter; the letter itself shows what it is I assume.

The Court: I assume she is doing that to get the record right.

Q. Did you write the original of that letter and mail it or cause it to be mailed to George Redeagle?

A. I did.

Mr. Ewert: Defendant offers in evidence the carbon copy by reason of the fact that they have failed to produce the original.

Mr. Currey: We object for the reason that the person to whom the letter is addressed, and whose heirs are the plaintiffs in this suit, is dead. And there is no evidence showing that the original of this letter was ever received by the deceased; and I want to add to that the further objection that the testimony of this witness shows that she is the agent and acting for and *and* at the instance of the defendant Ewert and is as much excluded by the rule in testimony relating to conversations and transactions with deceased persons as is the principal.

The Court: Now were you acting as stenographer to Mr. Ewert?

A. Yes, sir, since 1916 the first of August.

The Court: He dictated the letter and you transcribed it, from your notes and he signed the original and you mailed the original?

A. Yes.

The Court: Addressed to whom?

A. George Redeagle, Baxter Springs, Kansas.

The Court: Where did you mail it?

A. We mail our letters in the Frisco Building; our office is on the fourth floor, we put it in the mail chute in the hall.

The Court: Very well, I will overrule your objection.

Mr. Currey: We also object to the statements in this letter for the reason that they are self serving.

The Court: What is the date of the letter?

Mr. Currey: April 29, 1918.

Mr. Ewert: Before the settlement.

Mr. Currey: They are self serving.

The Court: Very well.

(And thereupon Mr. Ewert read Defendant's Exhibit #4 to the court.)

Mr. Currey: Now if the court please, I move the court to exclude from consideration in this case the statement therein that, "You were in the office during my absence at Washington and wanted to make settlement in accordance with the letter I wrote you some time ago," as being merely self serving declaration made by this defendant.

The Court: That will not be considered any evidence at all that that man was there. Your side introduced letters here on the theory that he was trying to inveigle him up there to get a settlement. I let that go in to show the first transaction or correspondence from him.

Q. During the year 1918, Miss Hallam, did George Redeagle, now deceased, call at the law office of Mr. Ewert in your presence?



A. He called there, yes; he was there.

Q. Did he have a conversation with Ewert, with me?

A. Several with Mr. Ewert, yes.

Q. Relative to the settlement of the case of Redeagle vs. Ewert.

Mr. Currey: I object to the conversation this person had because the deceased is dead.

The Court: I will permit this witness to testify about all those conversations. I wouldn't permit Mr. Ewert to testify to them, but if she knows anything about them she is a competent witness.

Mr. Currey: We except.

Q. What was said by Redeagle and what was said by Ewert relative to the settlement of this suit?

A. Do you want me to tell when he came there and you were not there?

Q. Begin with 1918.

A. The first time I think was in April, Mr. Ewert was down in Washington and Mr. Redeagle came to the office, he always called him "Paul?" He says, "Where is Paul?" I told him he was in Washington. He said, "I want to see him to get that case settled."

The Court: When was that?

A. The latter part of February or first of April, 1918.

Q. Latter part of March?

A. March, February or March, I don't remember the exact date.

Q. Did he later call any time during the time I was there?

A. He called several times between that and the first of June.

350 Q. And what was said in those conversations if you now recall them?

A. Well I remember he came up there once and he had the appearance that he had been drinking, and Mr. Ewert told him he wouldn't transact any business unless he was perfectly sober. He would have to come up there and bring somebody, told him he could bring any attorney he wanted to except Mr. Currey and Mr. Thompson, that he wouldn't deal with them; and Mr. Redeagle said all right he would.

Q. Then do you remember about how many times he called up there?

A. Oh he called probably on an average any way oh twice a month.

Q. I now show you a paper marked Defendant's Exhibit #5, entitled "Stipulation for Dismissal" and ask you to tell the court whether or not that was executed in your presence?

A. It was.

Q. Well will you state to the court the circumstances under which it was executed, what was said, who was present, all about the transaction?

A. Well to explain the transaction I will have to say Mr. Ewert had been preparing to go away on his summer vacation to be gone two months; he was going East, and on July first in the afternoon he came upstairs and told me that he had met George Redeagle down in the lobby.



Mr. Currey: We object.

Mr. Ewert: Don't state any conversation.

A. No. He prepared this stipulation before he went away and left instructions with me if Mr. Redeagle came in and wanted—

Mr. Currey: Never mind.

The Court: Just state who was present.

A. Well George Redeagle, J. C. Ammerman, I. E. Enyart,  
351 Stella De Honey and myself.

Q. Who is J. C. Ammerman if you know?

A. J. C. Ammerman is Referee in Bankruptcy for the United States Court; he has an office in Joplin #415 Frisco Building.

Q. Who is Stella De Honey?

A. She is employed in the office of the Ridgeway Land & Loan Company.

Q. And who is I. E. Enyart?

A. Mr. Redeagle stated to me Mr. Enyart was his tenant.

Mr. Currey: We object.

The Court: Well did any one come with Redeagle?

Mr. Currey: Go ahead I will withdraw the objection.

A. Mr. Redeagle introduced Mr. Enyart to me and told me he was his tenant on his farm down in Ottawa County, Oklahoma. That is the first time I had seen him.

Q. What did George Redeagle say to you at that time?

A. George Redeagle told me he had come up there to settle the case.

Mr. Currey: Of course the court understands we are objecting.

The Court: All right.

A. I told George Redeagle Mr. Ewert left certain instructions and left a letter for me to read to him.

Mr. Currey: What difference does that make?

Mr. Ewert: She is not a party in interest.

The Court: I have ruled in regard to this, unless you get me authorities this will stand. If you get any authorities to the contrary I am subject to change. Go ahead.

A. Mr. Ewert left me a letter telling Mr. Redeagle the conditions under which he would make the settlement and I read the  
352 letter and stipulation.

Q. Will you examine Plaintiff's Exhibit #2 and say whether or not that is the letter?

A. This is the letter I read to him and he read it and put it in his pocket that day and Mr. Enyart read it.

Q. What else was said and what was done?

A. Mr. Redeagle read over the stipulation, and he said that was all right he wanted to sign it. And I called in Mr. Ammerman as a

witness and Miss De Honey as notary public to take his acknowledgment; and I explained to him if he signed this stipulation that would mean he had dismissed his case.

Mr. Currey: We object.

The Court: That is immaterial.

Q. Did you read the stipulation to him?

A. I did.

Q. Tell what he said and what was done.

A. He told me he thoroughly understood, and in the meantime Mr. Ammerman came in and Mr. Ammerman also asked if he understood.

Mr. Currey: We object to the conversation between Mr. Ammerman.

The Court: I believe that is competent, Mr. Ammerman signed that as a witness.

A. And I explained to Mr. Ammerman that this case had been pending.

The Court: Oh never mind about that.

A. Mr. Ammerman asked Mr. Redeagle if he understood that his signing the stipulation meant his dismissing the case, and he said that he did.

Q. Is that George Redeagle's signature?

A. It is.

Q. Did you see him write it?

A. I did.

Q. Did you see the other persons sign as witnesses there?

353 A. Yes, I was present.

Q. At that time was there another paper executed?

A. At that time there was a quit-claim deed executed.

Q. I show you paper marked Defendant's Exhibit #6 and ask you if that is the paper that was executed at that time?

A. It is.

Mr. Ewert: Defendant offers Defendant's Exhibit #6 in evidence. Any objection?

Mr. Currey: No.

And thereupon Mr. Ewert read Defendant's Exhibit #6 to the court.

The Court: Very well.

Q. I hand you paper marked Defendant's Exhibit #7, and ask you if you paid anything to George Redeagle, and if so state what, for the signing of the stipulation and deed?

A. On that day I wrote a check on Mr. Ewert's account on the First National Bank of Joplin for seven hundred dollars, signed Mr. Ewert's name by myself as clerk, and delivered it to Mr. Redeagle that morning July 5, 1918.

Q. Will you examine the back of it and see what that signature is and whose it is?

A. It is endorsed on the back "George Redeagle" in his handwriting.

Mr. Ewert: Defendant offers in evidence Defendant's Exhibit #7, being a check for \$700.00, Redeagle's signature attached.

Q. Now you have stated that George Redeagle called at the office a number of times, will you tell the court whether or not at the time this exhibit quit-claim deed and the exhibit stipulation were signed George Redeagle appeared to have been drinking?

A. He did not, I remarked at the time he appeared——

354 The Court: Never mind about that.

Q. What did you say to him?

A. I asked if he had been drinking and he said he had not. I asked Mr. Enyart and Mr. Enyart said George had not been drinking.

Q. This settlement occurred in my office in a small room there did you notice the odor of any liquor, anything of that kind?

A. I did not.

Q. And from his appearance having seen him before what would you say as to whether he was drunk or sober?

A. I would say he was more sober than I had ever seen him that morning.

Q. I show you a paper marked Defendant's Exhibit #8 and ask you whether or not you typed that affidavit?

A. I did.

Q. Where was that affidavit executed?

A. It was executed in Mr. Ewert's office in Joplin #407 Frisco Building, on the day it is dated by I. E. Enyert in my presence.

Q. Who else was present?

A. George Redeagle was present when the affidavit was dictated.

Q. He didn't sign it there. After the affidavit was dictated in substance—let me ask this question first. Strike that. This statement was dictated to you—tell the court whether or not this statement was dictated to you and you took it in shorthand?

The Court: What is this?

Mr. Ewert: An affidavit signed by Enyert in the presence of Redeagle prior to his death.

The Court: Who is Enyert?

Mr. Ewert: Enyert is here in court.

The Court: That is not competent.

Mr. Ewert: Your Honor, we offer that as competent because at that time George Redeagle made a statement to and in the  
355 presence of Enyert and Miss Hallam, stenographer, saying that the things contained in that affidavit——

Mr. Currey: Wait a minute; I am objecting to the statement.

Mr. Ewert: Wait until I——

Mr. Currey: If the court is right that isn't admissible; it certainly isn't admissible.

The Court: He has a right to offer it.

Mr. Ewert: The court has already looked at that, Mr. Currey:

The Court: Yes, he has a right to offer that.

Mr. Currey: He is not offering it—well go ahead.

Mr. Ewert: And that it is an admission by Redeagle of the truth of the things their said and taken down in his presence by him and afterwards transcribed by Miss Hallam.

The Court: Well now Redeagle's evidence is not being introduced. Any evidence that he gave while living is not being introduced. There are times where a man's deposition taken while he is living may be introduced and it may be you may be able to show that subsequent admissions that were contrary to that, I am not so sure of that, but there may be an admission as against interest.

Mr. Ewert: This is an admission as against interest and made——

Mr. Currey: Let me look at it, maybe I will admit it.

Mr. Ewert: Surely a third party will be permitted to tell what George Redeagle said at that time.

The Court: I don't think so, it just depends on circumstances. The question of title, deed and not in possession his declarations as to possession might be proved some times.

356 Mr. Ewert: Well I wish you would read it your honor.

The witness has testified that it is a statement made in the presence of Redeagle by Enyert as to all the facts leading up to the signing of this stipulation.

The Court: I don't think that is competent.

Mr. Ewert: It was made in the presence of Enyert and my stenographer.

The Court: That is all hearsay.

Mr. Ewert: I can't agree with the court but I won't dispute of course.

The Court: If you have any authorities now I will hear you. Those things where you think enough of them to fix them up you should prepare for them; if they are competent that has been decided before. Now outside of a few of these Indian question there isn't a question on earth but what you can find some authority in point or that is analagous to it.

Mr. Ewert: But under the ordinary rules of evidence. Your Honor, as I understand the law of this case which needs no argument; this is the ordinary law of evidence that a statement made by the person after he executed the instrument, which is here under consideration, to some third person, that he executed freely and voluntarily; that he was sober; that he did the things named in that affidavit, Defendant's Exhibit #8, would be competent against him. I am not seeking to testify that.

The Court: I don't think so. If that is the law you ought to be able to find some authority. If that is so I was in error this morning in excluding that instrument.

357 Mr. Ewert: I thought that was on a different ground.

The Court: Not at all, on the ground of hearsay. And if

you can go and get that to bolster up your case I would have to open this up and let them go into that wide range and introduce hearsay evidence to show that they made contrary statements some where else.

Mr. Ewert: Kindly save me an exception to that.

The Court: Very well.

Mr. Ewert: In order to complete the record:

Q. At the time defendant's Exhibit #8 was executed did you hear Redeagle make any statements in the office in the presence of Enyett and myself and yourself as to his condition at the time he executed the stipulation?

The Court: She just testified he stated he hadn't had a drink that day.

Mr. Ewert: Well, you may take the witness.

Cross-examination.

By Mr. Currey:

Q. You have been employed in Mr. Ewert's office for two or three years?

A. Practically three years, be three years in August.

Q. You have frequently seen Mr. Redeagle on the street?

A. I haven't seen him on the street; I have seen him in Mr. Ewert's office.

Q. Ever see him on the street?

A. Very seldom.

Q. Ever see him when he was drunk?

A. He came up to the office one time when he was drunk.

Q. Is that the only time you remember seeing him drunk?

A. All that I remember of.

Q. Have you seen him on the street when he was drunk?

358 A. I don't know that I ever saw Mr. Redeagle on the street in Joplin.

Q. Where did Mr. Redeagle die?

A. I only know what I saw in the newspaper.

Q. Have you ever seen him with his wife?

A. I have with Julia Crow but not this other woman.

Q. You knew of the marriage?

A. I saw an item.

Q. And since that he got burned up?

A. Yes.

Q. Now in signing this instrument did Jack Ammerman read it?

A. Yes.

Q. Did he read it over to Redeagle?

A. Well, can I explain how Mr. Ammerman came in?

Q. Did he read it to Redeagle?

A. He read it over and asked if Mr. Redeagle—

Q. Well did he read it to Redeagle?

A. I think he did because he read out that certain clause about where it said suit had been brought by these attorneys against Mr. Ewert for the purpose of personal revenge, and he asked Mr. Redeagle about that and the matter was talked over. Mr. Redeagle says "Yes, that is so."

Q. You remember Mr. Redeagle—Mr. Ammerman asking him about the personal revenge?

A. Yes, I remember that distinctly.

Q. Did he use the word "revenge?"

A. He used the language in the stipulation; I don't exactly recall it.

Q. And was it talked over there what this revenge was for?

A. I don't think it was, no.

Q. Now you say you had been cautioned by Mr. Ewert not to have any transactions with Mr. Redeagle if he was drinking?

A. Yes.

Q. He told you that Mr. Redeagle wasn't responsible when  
359 he was drinking?

A. No. One day Mr. Redeagle was up there and wanted to settle the suit and Mr. Ewert said he wouldn't do it because he had been drinking; and he told him if he would come back when he was sober and bring some of his neighbors or business men or lawyers and he was sober he would settle with him.

Q. He was very particular he wasn't to bring his attorneys in this suit or have any talk with them about it?

A. Well he talked over with Mr. Redeagle, he told him they "snitched" the case.

Q. That is very common to charge they "snitched" the case, he meant me as well as Mr. Thompson?

A. Well he didn't specify you.

Q. And George Redeagle when he talked with you told him Mr. Thompson and I did "snitch" this law suit?

A. I don't know that he used the word "snitch."

Q. Well he told you that Currey and Thompson come there and got the suit from him?

A. Words to that effect, yes.

Q. And he referred to me as well as Thompson?

A. He said his attorneys.

Q. Well he mentioned Mr. Currey didn't he?

A. Well part of the time he said you attorneys.

Q. Didn't Mr. Redeagle tell you he didn't know where Currey's office was?

A. He never did.

Q. You remember he did mention my name up there?

A. I remember Mr. Ewert mentioned Currey and Thompson as his attorneys.

Q. Mr. Redeagle mentioned Currey and Thompson didn't he?

A. He probably did yes.

Q. And Mr. Redeagle told Ewert it was because Currey  
360 and Thompson had gone out to his place and "snitched" this law suit?

A. I don't remember that he said that, no. As I remember they said he had got him up in Mr. Thompson's office and brought the suit against his will.

Q. This was dictated to you wasn't it, this stipulation?

A. Yes, sir.

Q. And you knew and Mr. Redeagle knew that the parties referred to there were Mr. Thompson and myself?

A. Yes, sir.

Q. That was explained to him "by certain parties who desired to injure the said Paul A. Ewert"; that was explained by Mr. Ammerman?

A. I think it was. I explained the suit had been tried in the Federal Court and decided in favor of Mr. Ewert and Judge Campbell had stated when the case was to be tried that the plaintiff didn't have any cause of action.

Q. You told Mr. Ammerman about that, then Mr. Ammerman asked you who was meant by these certain parties didn't he?

A. I don't know that he asked me that. I said there was personal enmity between Mr. Ewert and Mr. Thompson and Mr. Currey.

Q. You told that to Jack? A. Yes. He said he didn't want to get mixed up in any squabble.

Q. But he took the stipulation and read it over very carefully?

A. Yes.

Q. What did he say about this stipulation in here "That George Redeagle was duly sober?" Why did you take so much pains in putting into this "We, the undersigned, do hereby certify that we were present when the above stipulation for dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it  
361 could not again be instituted; that the said George Redeagle was at said time and place possessed of all his faculties, and was sober and conversed intelligently?"

A. You will have to ask Mr. Ewert, he prepared it and I wrote it.

Q. You have often written contracts for Mr. Ewert?

A. Yes, sir.

Q. Do you remember writing any other contract not with an Indian where he put in the stipulation that the party was possessed of all his faculties and sober and conversed intelligently?

A. Well I haven't written many contracts with Indians.

Q. Did you ever write any other contract than this one since you have been in his office where that provision in regard to being sober and conversing intelligently was put in the contract?

A. Yes.

Mr. Ewert: That is objected to, Your Honor.

The Court: I think that is competent.

Q. Well what other one was it; you say Mr. Ewert dictated this?

A. Yes, sir, before he went away.



Q. And he dictated also this part signed by J. C. Ammerman and Enyert?

A. He dictated all that is typewritten.

Q. He dictated that before he left. Did he ever dictate any other contract for you in which he specified that the parties making the contract were in possession of all their faculties and sober and conversed intelligently?

A. Well I don't remember I have so many things to write.

Q. You don't remember that being put in any other contract since you have been there do you? Isn't it a fact you can't recall another single contract that he ever dictated to you where words to that effect were put into the contract specifying that the parties were sober and talked intelligently?

Mr. Ewert: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. I don't know that he did, I can't remember it.

Q. How long was Jack Ammerman in the room there in your office at the time this was signed?

A. Oh I would say about fifteen minutes.

Q. Did Jack ask George if he was sober?

A. I explained to him yes.

Q. You explained to Jack but I am asking what Jack said to Redeagle. Did Ammerman ask Redeagle if he was sober?

A. I think he did yes.

Q. Are you sure of it?

A. I explained Mr. Redeagle had been up there before and wanted to settle the case when he was drinking.

Q. He wanted to get him sober long enough to settle with him?

A. I don't know what he wanted.

Q. Did Mr. Ammerman ask "Now Mr. Redeagle are you sober?"

A. I presume he had been around enough to know.

Q. It is specified in this contract that he was possessed of his faculties and conversed intelligently, did Jack Ammerman converse with him?

A. He conferred with him about this stipulation and asked if he understood that he was dismissing that case.

Q. And that the stipulation meant to dismiss the case?

A. Redeagle said yes it had been tried out and decided against him and he thought he had better take that money.

Q. He didn't think he would ever get anything out of it?

A. Yes.

Q. And Jack told him he didn't think he would ever get anything out of it?

A. He didn't discuss it.

Q. Was Currey's name mentioned?

A. I think I stated that the persons mentioned in the stipulation meant Currey and Thompson.

Q. Did Jack ask if you had consulted with Currey about it?

A. Certainly not.

Q. Was there any request of Ammerman not to mention it to Currey?

A. No.

Q. And you say Jack stayed there about fifteen minutes and during that time he simply read the contract over did he?

A. Yes.

Q. Read it out loud?

A. I think he did.

Q. Well do you remember whether he did or not?

A. I know Redeagle read it and handed it to Mr. Enyert.

Q. Did Redeagle read it out loud?

A. He read it out loud to Mr. Redeagle and Enyert.

Q. And then Mr. Redeagle read it?

A. He read it to himself and handed it to Mr. Enyert.

Q. Was Jack there at that time?

A. No, sir.

Q. What did Redeagle and Enyert say about it to each other?

A. They talked it over.

Q. After they talked it over they said something, what did they say?

A. They said it is all right. Your Honor will notice it is dated June, Mr. Redeagle says "This will have to be changed because this is July."

Q. Was this contract dictated along in June when you put that word "June" in there?

A. As I remember it that contract was dictated the first day of July, I think, I am not sure.

Q. Well you have written the word "June" there, that is  
364 about when your negotiations commenced, you had had that contract drawn up for some time?

A. I don't think so; I think it was dated the first of July and I was still carrying the month of June; I often make that mistake.

Q. This is dated the 5th day of July?

A. Mr. Ewert dictated that to me as I remember it the first day of July before he went away on the second; he left on the second of July.

Q. Was it written out and examined by Mr. Ewert before he left?

A. Yes, and the letter was signed by Mr. Ewert.

Q. Then after Mr. George Redeagle and Enyert had stated that Redeagle was sober, that he conversed intelligently and that he had full knowledge of what he was doing then you sent for Mr. Ammerman?

A. Mr. Redeagle came in and told me he had received Mr. Ewert's letter.

Q. You have testified that Mr. Enyert and Mr. Redeagle read this over and passed it back to each other and said it was all right?

A. Yes.

Q. After that you sent for Mr. Ammerman?

A. I went in his office personally and told him I wanted him to come in and be a witness, that Mr. Ewert was out of town.

Q. At that time Mr. Enyert and Mr. Redeagle had read the contract over and decided it was all right?

A. I had read it out loud in their presence and they had each read it. Then I went and got Mr. Ammerman.

Q. Then Ammerman came in and you handed it to him?

A. He came in.

Q. Then you handed it to him to read?

A. Yes I read it to him.

Q. And explained it to him?

A. He read it. George Redeagle signed it first.

365 Q. When Ammerman came in isn't it a fact Ammerman held the paper out to Redeagle and says "Is this your signature Redeagle?"

A. No, Redeagle signed it and then Mr. Ammerman picked up the paper and read it over.

Q. Did he read it out loud?

A. He did the last clause.

Q. Did he ask George if he was sober?

A. He looked at him and says "I presume you are sober" or "You look sober."

Q. And then signed his name and got out?

A. No, Mr. Redeagle explained he had sold this land at government sale and it had been bid in and explained about the lawsuit.

Q. And he had been beat in the lawsuit and Ewert explained to him he was going to lose out?

A. No.

Q. You have testified to all you know about it have you?

A. I don't know whether all I know would be admissible.

Mr. Currey: That is all.

Mr. Ewert: That is all.

(Witness dismissed.)

And thereupon court took a recess until tomorrow morning at ten o'clock, a. m.

And thereafter at ten o'clock a. m. April 9, 1919, court reconvened pursuant to adjournment and the following proceedings were had:

And thereupon J. C. AMMERMAN, produced, sworn, and examined as a witness for and on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. You may state your name and residence.

A. J. C. Ammerman, Joplin, Missouri.

366 Q. What is your business?

A. Attorney.

Q. Do you occupy any Federal position?

A. I am Referee in Bankruptcy for that district.

Q. How long have you been such?

A. Six or eight years.

Q. I now show you Defendant's Exhibit #5 and #6 and ask you if that is your signature attached to those two exhibits?

A. Yes, sir.

Q. Were you present when the stipulation, Exhibit #5, and the quit-claim deed, Exhibit #6, were signed and executed by George Redeagle?

A. Yes, sir.

Q. Did you at that time have occasion to observe George Redeagle as to ascertain whether or not he was under the influence of drink at that time?

A. In answering that question I will say I was called in—

Q. Just tell the court all about it.

A. I was called into Mr. Ewert's office by his stenographer there Miss Hallam to witness the signature to a deed, and when I came into the office I was introduced to Mr. Redeagle and this other gentleman that signed with me.

Q. Ewert?

A. I didn't know either one of them, that is personally. I had seen Mr. Redeagle before, I remembered his face, and Miss Hallam then read this deed at the desk and handed it over to Mr. Redeagle and she told him to sign on the top line. I asked him at the time if he knew what this was, a conveyance from you to Mr. Ewert for the land described, and then I signed as a witness. Miss Hallam then read the stipulation and Mr. Redeagle signed it and I signed underneath.

Q. Was Mr. Redeagle sober at that time from appearances?

A. From appearances he was.

Q. Did you notice anything about him to indicate any  
367 impaired mental condition, anything of that kind as far as  
you could observe?

A. No, none that I observed.

Q. Now in the execution of both of those papers, the quit-claim deed and the stipulation, tell the court whether there was anything to indicate coercion or influence anything of that kind urging him to sign?

A. No there wasn't as far as I could see; I was only in the office about fifteen minutes. I was busy at the time and wanted to get back to my office.

Mr. Ewert: You may take the witness.

Cross-examination.

By Mr. Currey:

Q. Mr. Ammerman your office is on the same floor with Mr. Ewert's office?

A. Yes, sir.

Q. You was only in the office of Mr. Ewert just a few minutes?

A. Not to exceed fifteen minutes I don't believe all told.

Q. And you had never met to know either one of these gentlemen before except you had seen Mr. Redeagle and knew he was an Indian?

A. I knew he was an Indian that lived down near Quapaw or Pitcher.

Q. And you have told all that took place there have you?

A. Yes.

Mr. Currey: That is all.

Mr. Ewert: That is all.

(Witness dismissed.)

And thereupon I. E. ENYERT, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. State your name.

A. I. E. Enyert.

368 Q. Mr. Enyert where do you live?

A. I live in Oklahoma, Cherokee County—Ottawa County rather.

Q. How old are you?

A. Forty years old.

Q. Forty?

A. Yes, sir.

Q. What is your business?

A. Farmer.

Q. Are you a tenant of George Redeagle?

A. I had part of his land formerly.

Q. What part of it, where he resided?

A. Yes, sir, forty acres.

Q. Are you the same Enyert who signed a stipulation and a quit-claim deed, Defendant's Exhibits #5 and #6, as a witness?

A. Yes, sir.

Q. Will you just tell the court in your own way how you came up to Joplin with George Redeagle?

A. Yes, sir.

Q. Tell the court when he came to you, how you came to go there and what your part in the transaction was.

A. On the 4th day of July George Redeagle came to my place about eight and wanted me to take him to Joplin to make a settlement with Mr. Paul A. Ewert. I told him I couldn't go my car wasn't home at the present. So he went away and about three-quarters of an hour he came back again and wanted me to take him to Joplin again. So he made a proposition to me that he would pay me for taking him; and I told him I was busy and couldn't go;

he offered me fifty dollars to take him. I told him I wouldn't fool away my time.

Q. He wanted you to use your automobile?

A. Yes, sir. And I finally told him I would take him if he would give me \$100 after he presented to me the letter from Mr. Ewert. I read the letter over.

Q. What time of year was this, how was your corn?

A. I was laying my corn by.

369 Q. Busy in the fields and busy with your work?

A. Yes, sir.

The Court: How far from where you lived to Joplin?

A. Why it is about twenty-three miles.

Q. Mr. Enyert before you go any further when was the first time you ever saw or had any conversation with me in any manner?

A. Along about the 14th day of October.

Q. What year?

A. 1918.

Q. That was three or four months after this stipulation was entered?

A. Yes, sir.

Q. All right tell the court what you did; did you take him to Joplin?

A. Yes, sir, I sure did.

Q. Tell just what happened from the time you left and where you were during the fourth of July.

A. Well when I taken him up the 4th of July we went up to Mr. Paul Ewert's office and there wasn't no one there so we walked around on the street the rest of the day and stayed there that night. The next morning about eight o'clock we went up to Mr. Paul Ewert's office.

Q. What was George Redeagle's condition when he came to your place on the morning of July 4th with respect to being sober?

A. He was perfectly sober.

Q. You were with him all the time during the 4th of July?

A. Yes, sir.

Q. Did he take a drink during that time?

A. He did not.

Q. Of any kind?

A. He did not.

Q. How long were you with him during the 4th of July?

A. I was with him from about nine o'clock until nine or nine thirty that night.

Q. Did you leave George Redeagle that night, if so where?

A. I left him that night in a rooming house on Seventh Street.

Q. A hotel?

370 A. Yes, sir.

Q. Tell the court the circumstances of that?

A. Well when I left him he was perfectly sober and I and a friend of mine Cousatt went out on the street.

Q. Was he preparing to go to bed?

A. Yes, sir, told me he was tired and was going to lay down and go to sleep; and I told him I would meet him at the Frisco depot the next morning.

Q. Did you meet him?

A. I sure did.

Q. What was his condition at that time?

A. He was all right, perfectly sober.

Q. Did you have any drinks that morning any of you?

A. No, sir.

Q. What happened then?

A. We went up to Mr. Paul Ewert's office to make the settlement.

Q. Did Redeagle tell you what he wanted to do when he came to you?

A. He sure did.

Q. What did he tell you?

A. He told me he wanted to go up and make a settlement with Mr. Paul Ewert.

Q. What did you do then at nine o'clock?

A. We went up to Mr. Ewert's office.

Q. Whom did you find there?

A. I found his stenographer.

Q. Miss Hallam?

A. Yes, sir.

Q. What did George say to Miss Hallam?

A. He told Miss Hallam—well he asked for Mr. Ewert; she told him Mr. Ewert wasn't there, he was off on a vacation. He told her he wanted to make a settlement and showed her this letter. And Miss Hallam told him she wouldn't make a settlement with him if he was intoxicated at all; and George says "I am not intoxicated," that is the reason I went with him.

Q. You were subpoenaed in this case by the other side were you not?

A. Yes, sir.

Q. Were you present when Defendant's Exhibits #5 and #6 were signed and executed, #5 being a stipulation for dismissal?

A. Yes, sir.

Q. And #6 being the quit-claim deed?

A. Yes, sir.

Q. Is that your signature appearing as witness in each case?

A. Yes, sir.

Q. Did Miss Hallam read these papers?

Mr. Currey: Wait a minute.

The Court: State what was done.

Q. What was done by Miss Hallam if anything before George Redeagle signed these papers?

A. She read the stipulation to him.

Q. Do you remember of her reading to him a letter at that time?

A. Yes, sir.



Mr. Currey: Now I object to that; the witness can tell what took place without being led.

The Court: That is inclined to be leading. You might ask if anything was read to him what it was and not point out to him just exactly.

Q. Did you hear Miss Hallam read a letter or any paper?

Mr. Currey: That is the same thing again.

The Court: State what she said or if she read anything to him what it was.

Q. Did Miss Hallem read anything?

A. Yes, sir.

Q. What was it?

A. She read the stipulation of the deed, not the deed but the settlement, if he would come there perfectly sober and sign the papers.

Q. I show you Plaintiff's Exhibit #2 and ask you to refresh your recollection by looking at it. State whether or not Miss Hal-  
372 lam read that letter if you remember the substance of it by reading it to Mr. Redeagle at that time?

A. Yes, sir.

Q. How long have you known George Redeagle?

A. I have known him for about fifteen years.

Q. Did you know him during the year 1917?

A. Yes, sir.

Q. What kind of an Indian was he with respect to education and so forth?

A. He had a good education.

Q. How did he compare in intelligence with the average run of people in the community white or red?

Mr. Currey: I object to that.

The Court: You can get it better than that.

Q. Could he read and write?

A. Yes, sir.

Q. You saw him write his signature to these papers?

A. Yes, sir.

Q. Talked English well?

A. Yes, sir.

Q. How well—

Mr. Currey: He leads the witness all the time.

A. He was a well educated Indian, could write as good as most white people or a little better. He was a pretty intelligent man, business man too.

Q. You stated you worked his home place?

A. Yes, sir.

Q. Did you have an opportunity to observe George during the year 1917?

A. No, sir.

Q. Did you see George any during the year 1917?

A. Why sure, yes, sir.

Examination.

By the Court:

Q. How often did you see him during the year?

A. Oh I seen him I expect well pretty near two or three times a week, that is the most of the time.

373 Mr. Ewert: And where did George live with respect to this land you were working?

A. Lived on the southwest corner, southeast corner—it is the southwest corner.

Q. What sort of a contract did you work that land under?

A. On verbal contract.

Q. Who did you make the contract with?

A. I made it with Mr. Redeagle.

Q. George Redeagle?

A. Yes, sir.

The Court: Go ahead.

Examination.

By Mr. Ewert:

Q. You paid George money during this time did you; state whether or not you paid him his rental?

A. Yes, sir, I paid him his rent.

Q. Did you ever notice anything wrong about him during the——

Mr. Currey: I don't think that is the criterion.

The Court: What is the objection, Colonel?

Mr. Currey: Leading.

Q. Mentally or otherwise.

The Court: He says, did you ever notice anything wrong about him? That don't suggest the answer to him the way I understand a leading question. I think that comes within the rule.

Mr. Currey: Well maybe it does.

Q. Did you ever notice anything wrong about him mentally?

A. No, sir.

Q. What was the condition of his mind on the 4th and 5th of July when you were with him, mind clear?

A. Yes, sir.

Mr. Currey: We object as leading.

The Court: That won't do.

374 Mr. Ewert: Yes, I think that is.

Q. State whether or not Miss Hallam gave George Redeagle anything at the time he signed these papers.

A. Yes, sir, gave him seven hundred dollars.

Q. I show you instrument marked Defendant's Exhibit #7, which is a check for \$700.00, was that written there at that time?

A. Yes, sir.

Q. After these two instruments were signed did you accompany George Redeagle further that day?

A. Yes, sir.

Q. Where did you go?

A. I and George Redeagle went to the bank and cashed the check.

Q. What happened then?

A. The cashier paid me \$100.00 and put \$550.00 in the bank and he got \$50.00.

Q. How long did you remain with George Redeagle then or did you leave him?

A. We went out of the bank then and went up on Sixth Street and I left George there and I went down to see about my car. When I got back George was gone; I didn't see him any more.

The Court: Did he pay that \$100.00?

A. Yes, sir, the cashier paid me the \$100.00 himself.

Q. Did I at any time ever have any conversation with you of any kind or character relative to this land?

A. No, sir.

Q. When was the first time I ever talked to you about it?

A. Along about the 14th of October.

Q. Where was that?

A. It was in Mr. Ewert's office.

Q. Who was present then?

A. Mr. George Redeagle.

Mr. Ewert: You may take the witness. I desire at this time to offer in evidence the stipulation for dismissal if I haven't done so being Defendant's Exhibit #5, and also the deed, which is  
375 Defendant's Exhibit #6, if I have overlooked it.

Cross-examination.

By Mr. Currey:

Q. You say Mr. Redeagle paid you, agreed to pay you, and paid you \$100.00 for taking him up there?

A. Yes, sir.

Q. Have you ever told anybody Mr. Redeagle paid you one-half of the \$700.00 for taking him up there?

A. No, sir, I have not.

Q. Are you sure that Mr. Redeagle drew two checks there one for \$100.00 and one for \$50.00?

A. Am I sure?

Q. Yes.

A. No, Mr. Redeagle didn't draw this \$100.00 at all, wasn't no check to it.

Q. There wasn't any check?

A. No, sir.

Q. Are you sure Mr. Redeagle got \$100.00 or \$50.00?

A. Mr. Redeagle didn't get no hundred dollars.

Q. Sure of that?

A. Yes, sir, not when the check was cashed.

Q. You think he deposited \$550.00?

A. Yes, sir, that is what I think he deposited.

Q. You are not sure of that?

A. No, I ain't sure but that is what I think it was.

Q. I hand you here what is marked Plaintiff's Exhibit #7 which appears to be a statement of deposit from the bank.

Mr. Ewert: We object to that, the book hasn't been identified.

The Court: I don't think this is competent for any purpose.

Mr. Currey: It isn't only to refresh his memory.

The Court: That is not his act.

Mr. Currey: George Redeagle's?

The Court: That is not the witness' act.

376 Mr. Currey: No I know it isn't but I am going to ask to examine him in reference to this and then I am going to ask to present the affidavit from the bank to the court that this is a statement of Redeagle's account.

The Court: Of course I think it is competent, you can prove by an officer of the bank what he deposited there and how much he drew out, but I don't see how that is competent.

Mr. Ewert: It isn't excepting it purports on its face—I am not going to offer it in evidence. I understand that I can for the purpose of refreshing the memory of a man——

The Court: You can show the instrument that he handled.

Mr. Currey: Can't show him what purports to be——

The Court: I don't think so. No evidence that that ever was in his possession.

Mr. Currey: No, it never was in his possession.

The Court: That couldn't refresh his recollection then.

Mr. Currey: As to the amount—let me ask this question:

Q. If the bank book identified by the bank was introduced in evidence and shows that the deposit was only \$500.00 would you still say the amount he drew out was \$50.00 for himself and \$100.00 for you?

Mr. Ewert: That is objected to as incompetent, irrelevant and immaterial, improper cross examination.

The Court: I think he may answer that.

Mr. Currey: What is your answer?

A. I couldn't just say \$50.00 or a hundred.

Q. The fact is you didn't notice how much he drew out?

A. He deposited part in the bank.

377 Q. You got \$100.00?

A. Yes, sir.

Q. You took Redeagle back home with you?

A. No, sir.

Q. Left him in Joplin?

A. I sure did.

The Court: How come you not to take him back?

A. He left me there and I wasn't supposed to take him back.

Q. Did you see him after that?

A. No, sir.

Q. Did you subsequently see him in Joplin and haul him back to his place?

A. No, sir.

Q. Did you haul him any where?

A. No, sir.

Q. Did you ever haul him out of Joplin?

A. Yes, sir.

Q. How long after this transaction?

A. Well I couldn't just say how long it was.

Q. A few days afterwards wasn't it?

A. Quite a few days.

Q. It was within a week?

A. Well I couldn't say whether it was or not.

Q. What was his condition when you hauled him out?

A. He was drinking that day.

Q. Who was with him?

A. His wife and another fellow was with him.

Q. Was the woman then his wife?

A. Yes, sir.

Q. How did you come to take him out of Joplin, just tell the court.

Mr. Ewert: That is objected to, not being proper cross examination.  
The Court: Well you may answer.

A. I and my wife was up at Joplin so we started out home and as we came by Twentieth Street out there I stopped and got two bottles of beer, and George was sitting in there and he wanted to know if he could ride out home with me. I said certainly and he got in the car and we started on out home.

378 Q. Anybody get in with him?

A. Yes, sir, his wife, and when we had gone out about a mile from town here comes another fellow in a taxi and stops us and wanted to know if I would let him ride out with Mr. Redeagle. His wife said he was all right, and I said all right and he got in the back seat and rode out as far as the Devils Promenade.

Q. What happened along the road?

A. Well, they just got—I put them out of the car.

Q. They was all drunk?

A. Yes, sir.

Q. The woman was drunk?

A. Yes, sir.

Q. And George was drunk?

A. Yes, sir.

Q. And the fellow with them was drunk?

A. No, sir, the fellow with them wasn't so drunk.

Q. They were quarreling?

A. Yes, sir.

Q. Quarreling over some papers weren't they?

A. Well, I don't know what they were quarreling over.

Q. But they got so bad you had to put them out of your car?

A. Yes, sir, his wife did.

Q. Well, Mr. Redeagle also?

A. No, sir.

Q. Wasn't Redeagle drunk?

A. He was drinking, yes he was.

Q. He wasn't drinking, he was drunk?

A. Well, I don't know whether he was drunk or not.

Q. He could sit up?

A. Yes, sir.

Q. He was talking very loud?

A. Not much louder than usual.

Q. Not much louder than usual?

A. No, sir.

Q. Well, anyhow you knew he was drinking when you took him in your car?

A. I sure did.

Q. Now you say you had known Redeagle for a long time?

A. Yes, sir.

Mr. Ewert: I move that that part of the cross examination relating to this incident be stricken out, not proper cross examination, immaterial, something happening possibly two weeks after this instrument was signed.

The Court: That is overruled; go ahead.

Q. The truth of the matter is you put George Redeagle and his wife and this man out because they were all drunk?

A. No, that wasn't what I put them out for at all.

Q. What did you put them out for?

A. I put him out on account of his wife using bad language.

Q. Cursing, blackguarding?

A. Blackguarding, yes, sir.

Q. This other fellow with them seemed to be of the same class didn't he?

A. No, sir.

Q. Was he very noisy?

A. Seemed to be pretty nice kind of a fellow, that is as far as I knew; I never saw the man before.

Q. Did you see George Redeagle after that?

A. No, not the balance of that day.

Q. Well, did you see him any days after that?

A. Well, I couldn't say just exactly when, three or four days.

Q. Where did you see him?

A. Up at the Redeagle mine.

Q. Up at the Redeagle Mine?

A. Yes, sir.

Q. How often did you see George Redeagle after that time up to the time he died?

A. Well, George was gone there for awhile, he was off down to Hominy.

Q. After this incident where you put them off at the Devil's Promenade?

A. Oh, no.

Q. How often did you see him after you put them off at the Devil's Promenade?

A. Quite often.

Q. Once a week?

A. Yes, something like that.

Q. Where did you see him principally?

A. Generally around home or up at the mines.

380 Q. You were frequently up there at his place and at the mines?

A. Yes, sir.

Q. Did you ever have any business with him that caused you to go to his place?

A. No, sir.

Q. Have any business with the mines?

A. Yes, sir.

Q. Do you own an interest in the mines?

A. I had three teams working up there.

Q. Hauling ore?

A. Yes, sir.

Q. This mine is on restricted land right there near to the house?

A. Yes, sir.

Q. The house where George lived is a little two room house?

A. No, sir.

Q. You have been in it?

A. Yes, sir.

Q. How many rooms in the house?

A. I couldn't say; it is a two story house.

Q. Where he lived when he died?

A. Yes, sir.

Q. Got an upstairs to it?

A. Yes, sir.

Q. Has a shed on one side of it?

A. No.

Q. Porch?

A. Porch on two sides.

Q. You had known Redeagle a long time you say before you took him up there?

A. Yes, sir.

Q. Who paid the expenses while you were at Joplin the time you took him on the 4th of July?

A. I paid mine and he paid his.

Q. Did you see him pay his expenses?

A. Yes, sir.



Q. Who did you see him pay?

A. He paid for his room that night when I took him up to his room.

Q. You left him about nine o'clock at night?

A. Yes, sir.

Q. Did you afterwards see him in Joplin?

A. Yes, sir.

Q. Any other time than the time you have mentioned?

A. I have seen him there several times, yes; sure I have  
381 seen him several times in Joplin.

Q. Generally drunk when you saw him wasn't he?

A. He was drinking at times, yes, sir.

The Court: After the time you went up there with him when he  
signed this stipulation did you ever see him up there sober any other  
times?

A. Yes, sir.

The Court: How many times?

A. Two or three times.

Q. Tell one place you saw him sober after you put him off at the  
Devil's Promenade; tell one place in Joplin where you saw him  
when he was sober.

A. I saw him on Sixth Street the day he went up to Mr. Paul  
Ewert's about the 14th of October.

Q. That was the day that they had some proceeding up in Ewert's  
office to make an affidavit, you made an affidavit?

A. Yes, sir.

Q. Did you go up there with him that day?

A. I went up with Mr. Redeagle that day

Q. You took him up there?

A. I didn't take him, I went up with him.

Q. He didn't go up at your solicitation?

A. No, sir.

Q. How did he go?

A. He went on the street car

Q. Did you go on the same car?

A. Yes, sir.

The Court: How came you to go?

A. I went up to lease a piece of land.

Q. Did you know when you left home you were going up to  
Ewert's office?

A. No, sir.

Q. How did you come to find out you were to go to Ewert's office  
after you got to Joplin?

A. I told Mr. Redeagle, let's go up and see Mr. Ewert on this  
settlement; I wanted Mr. Ewert to see this gentleman.

Q. You wanted him to see Mr. Redeagle?

A. Yes, sir.

Q. You knew Mr. Ewert was well acquainted with Mr. Red-  
eagle didn't you?

A. No, sir.

Q. You didn't know he knew him at all?

A. No, sir.

Q. You thought the day you were there Mr. Redeagle and Mr. Ewert were strangers?

A. I did as far as I knew.

Q. Didn't you testify a little while ago when Mr. George Redeagle came to you to get you to take him up there he showed you a letter?

A. Yes, sir.

Q. Could you identify that letter?

A. Yes, sir, possibly I could; I don't know that I could.

Q. Do you know whether the letter I hand you now is the letter that Mr. Redeagle showed you and that you read that morning?

A. Yes, sir, that is the letter.

Q. The letter is marked Plaintiff's Exhibit #1?

A. Yes, sir.

Q. That is Exhibit #1; now do you know whether you ever saw the letter I now show you which is marked Exhibit #2?

A. No, sir, I don't think.

Q. Don't think you ever seen that. That letter, Plaintiff's Exhibit #2, consisting of two pages, did the letter he showed you when he hired you to take him up there have two pages or one?

A. I only seen one.

Q. Now when you were up in Mr. Ewert's office you saw J. C. Ammerman didn't you?

A. I seen a gentleman come in and I didn't know the gentleman.

Q. Did you see the same gentleman here this morning on the witness stand, the first witness put on this morning?

A. Yes, sir.

Q. That is the same gentleman?

A. Yes, sir.

Q. Now Mr. Ammerman was brought in there and seen everything that you seen didn't he?

A. Yes, he seen everything that I seen.

383 Q. You say he did not?

A. He seen the letter, the papers were read to Mr. Redeagle and I.

Q. That was the quit-claim deed?

A. Yes, sir.

Q. Now when you went into Mr. Ewert's office there Mr. Redeagle—that is the day these papers were signed—Mr. Redeagle asked the stenographer, this clerk, where was Paul didn't he?

A. Yes, sir.

Q. From that you knew they must have been acquainted before didn't you?

A. Why sure.

Q. Now what did Mr. Ammerman do when he came in there?

A. Came in there and read this paper over and signed as a witness.

Q. And that was all?

A. Yes, sir.

Q. He didn't say anything to anybody?

A. He talked a little bit.

Q. What did he say?

A. I don't remember just what he said.

Q. Don't remember anything he said?

A. No, sir.

Q. You say he talked and read over a paper?

A. Yes, sir, the same one that I signed.

Q. That was this letter marked Defendant's Exhibit #6 was it?

Mr. Thompson: Deed you mean.

Q. You don't know that he signed that?

A. I know I did.

Q. I didn't understand you.

A. I say I signed it.

Q. You don't know whether Redeagle signed it there or not?

A. Redeagle? Yes, sir, Redeagle signed the papers there.

Q. Well did Ammerman sign it?

A. She had him sign the two papers.

Q. Which one did Jack read; which one did Mr. Ammerman read?

A. Well I couldn't say just now.

384 Q. He didn't read but one did he?

A. Well I couldn't say.

Q. Wasn't you paying attention to what was taking place?

A. Not a great sight.

Q. You didn't talk any at all with Mr. Ammerman?

A. No, sir.

Q. Mr. Ammerman didn't ask you how long you had known Mr. Redeagle?

The Court: I think you are wasting time. I am going to find what that witness did. I don't see any use in wasting time over that.

Q. If I understood you right you say when you went up there prior to the day you went there you didn't know Ewert and Redeagle knew each other?

A. No, sir.

Q. Didn't Mr. Redeagle tell you he knew Mr. Paul Ewert?

A. No, sir, Mr. Redeagle told me he had business with Mr. Paul Ewert, a settlement to make with him.

Q. That is all he did tell you?

A. Yes, sir, he told me he wanted me to take him up there.

Q. And you told him you would charge him \$100.00 and he agreed to pay it?

A. I sure did.

Q. And subsequently did pay you the \$100.00?

A. Yes, sir.

Q. Well if I understood you right you said on the 14th day of October after this transaction you took Redeagle to Mr. Ewert's office because you wanted Redeagle to see Ewert?

A. I took him up there with me, I wanted to see Mr. Ewert yes, sir. I wanted to talk to him about this lease.

Q. And you took George with you?

A. Yes, sir.

The Court: Which lease did you say you wanted to talk about?

A. The lease I have of him now; I have a lease on the same forty acres again.

385 Q. Didn't you say you took Mr. Redeagle up there because you wanted Mr. Redeagle to see Ewert?

A. Yes, sir.

Q. And up to that time you didn't know that Mr. Redeagle and Ewert knew each other?

A. He must have knew him when he was making this settlement with him.

Mr. Currey: That is all.

Redirect examination.

By Mr. Ewert:

Q. When you came up there you spoke about a lease, you wanted to lease this same land of Redeagle?

A. Yes, sir.

Q. That is how you come to be there that day?

A. Yes, sir.

Q. Tell the court how much land you are farming, how many farms you have?

A. I have about 180 acres.

Q. And in addition to that you have stated you did teaming?

A. Yes, sir.

Q. Had three teams hauling ore at that time?

A. No, sir, teams hauling ore and two teams.

Mr. Ewert: I want to show why he was leaving his work at that time of year and wouldn't go for nothing.

Q. Had he come to your prior to this 4th day of July to get you to take him up to my office?

A. No, sir.

Recross-examination.

By Mr. Currey:

Q. Mr. Enyert you went up to Mr. Ewert's office with Mr. Redeagle to see about renting Redeagle's land?

A. Yes, sir.

Q. Then you understood that Mr. Ewert was representing Mr. Redeagle did you?

A. No, sir.

Q. Well what was you seeing Ewert about renting Redeagle's land for?

A. I simply wanted to know whether he was a competent Indian or incompetent.

386 Q. You went up there to find out from Mr. Ewert whether he was competent Indian or incompetent?

A. Yes, sir.

Q. So you would know whether he was competent to make you a lease, that is correct is it?

A. That is correct.

Q. Now there is a street car runs from Baxter Springs up to Joplin with a charge of about fifty cents isn't there, that runs every half hour don't it?

A. Yes, sir.

Q. And you live about how far from that street car?

A. I live about six miles.

Q. And Mr. Redeagle lives about how far from there?

A. About the same distance.

Q. How far is it from Mr. Redeagle's house where he lives to this street car, it runs down south of Baxter; now don't he live within a mile of that street car?

A. No, sir.

Q. Is it more than a mile up over the hill from his house?

A. Yes, sir.

Q. How many miles?

A. I should judge between four and five.

Q. Between four and five miles?

A. Yes, sir.

Q. How far is it from Baxter to Lincolnville?

A. I don't know just exactly, but it is between five and — a half miles.

Q. Between five and five and a half miles?

A. Yes, sir, to Lead——

Q. Well to Lincolnville?

A. It is six and a half miles anyhow I should judge.

Q. Now you live off of the road——

A. I wouldn't say just how far it is.

Q. Now you live off of the road to Baxter?

The Court: You are taking up too much time; you must hurry.

A. I don't know what they asked me.

387 The Court: You all are killing time; you ain't trying this before a jury now, you are just killing time.

Mr. Currey: That is all.

(Witness dismissed.)

And thereupon STELLA DE HONEY, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. State your name please.

A. Stella De Honey.

Q. Where do you live?

A. Joplin, Missouri.

Q. What is your employment?

A. Stenographer.

Q. Would you mind stating about how old you are?

A. Twenty-five.

Q. Do you remember the occasion in the month of July, 1918, taking an acknowledgment to a paper in my office which Mr. Redeagle made?

A. Yes, sir.

Q. I show you Defendant's Exhibit #6 and ask—which is a deed—and ask you if that deed was executed in your presence?

A. Yes, sir.

Q. Is the name attached thereto your name?

A. Yes, sir.

Q. Are you the Notary Public?

A. Yes, sir.

Q. And were at that time?

A. Yes, sir.

Q. Did you also see another paper signed there at the time entitled Stipulation for Dismissal, Defendant's Exhibit #5?

A. Yes, sir.

Q. Tell the court the circumstances will you, what was said and done by those present?

A. On the morning of the 5th of July I was called to Mr. Ewert's office to take some acknowledgment and Mr. Redeagle and 388 Mr. Enyert were in the office, pretty soon Mr. Ammerman came in, and Miss Hallam read these papers over to Mr. Redeagle and asked if he perfectly understood them. He said yes and he signed them before Mr. Ammerman, Mr. Enyert and myself and I acknowledged them.

Q. Did you observe Mr. Redeagle as to whether he was intoxicated?

A. No, he appeared to be perfectly sober.

Q. Notice anything about him that would make you think he was not right mentally?

A. Not a thing.

Q. Did you hear them converse there?

A. Yes, sir.

Mr. Ewert: You may take the witness.

Mr. Currey: That is all.

(Witness dismissed.)

And thereupon R. A. COUSATT, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Ewert:

Q. State your name.

A. R. A. Cousatt.

Q. Where do you live?

A. Live in Oklahoma.

Q. Where?

A. Ottawa County, oh I live at Hopperville.

Q. What is your business?

A. I am a miner.

Q. What line of mining work do you do?

A. I run a machine in the ground.

Q. Machine drill?

A. Yes, sir, machine drill.

Q. Are you acquainted with George Redeagle?

A. Yes, sir.

Q. Are you acquainted with Mr. Enyert?

A. Yes, sir.

Q. How long have you known Mr. Redeagle?

A. I knowed him ever since I was a small boy; we belong to the same tribe.

Q. You are part Indian by blood?

A. Yes, sir.

Q. Tell the court what you know——

389 The Court: Was Redeagle a full blood?

A. Well yes, sir, I think Redeagle is a full blood now; if he ain't he is awfully near it.

Q. Tell the court what you know about his education and his talent and ability.

Mr. Currey: I object to his telling about his talent and ability until he has narrated——

The Court: Yes, he will have to tell the facts.

Q. How long have you known Redeagle?

A. Well ever since I was a small boy.

Q. How frequently did you see him?

A. I worked on his place for about two years and I seen Mr. Redeagle every day.

Q. What two years did you work on his place?

A. It has been about three years ago.

Q. Did you keep on seeing him from that time on?

A. Yes, sir.

Q. Up to the time of his death?

A. Yes, sir.



## Examination.

By the Court:

Q. Where did you live in 1918 when he died?

A. When he died?

Q. Yes.

A. Well I was gone to camp then.

Q. How far was that from where he died?

A. I was gone to camp; I was in the army.

Q. Oh I see. When did you go to the army?

A. I went in August.

Q. August 1917?

A. 30th of August.

Mr. Currey: 1918.

Q. 1918?

A. 1918, 30th of August.

Q. How many times did you see him in 1918 before you went to the army?

390 A. Well I seen him up there in Baxter; he went to Joplin three or four times a week and I would meet him on the road and he used to come there to my brother-in-law's.

Q. You say you worked three years?

A. I worked in his mine.

Q. He didn't run it?

A. No, sir; it is on his land.

Q. Did you ever make any contracts with him?

A. No, sir.

Q. Just see him and talk to him?

A. Yes, sir, he was a smart man to talk to; I liked to talk to him.

The Court: Go ahead.

## Examination.

By Mr. Ewert:

Q. Did you see Mr. Redeagle along about the 4th day of July 1918 when these papers were executed?

A. Yes, sir.

Q. Where?

A. On Sixth Street, he and Mr. Enyert were together.

Q. You met there at Sixth Street?

A. Yes, sir.

Q. On what date?

A. 4th of July.

Q. About what time?

A. Well it was about nine o'clock; I suppose I never had my watch.

Q. Who was with him, Enyert?

A. Yes, sir, Mr. Enyert was with him.

Q. State what you did then.

The Court: Nine o'clock at night or morning?

A. It was in the morning.

Q. Of the 4th of July?

A. 4th of July.

Q. Did you leave him then?

A. No, sir.

Q. How long did you remain with him that day?

A. I believe I was with him all day that day. About ten o'clock I suppose that night me and Mr. Enyert took him down—he went down with us on Seventh Street and went to bed and we went away from him.

Q. Did you see him next day?

A. Yes, sir.

391 Q. What time?

A. It was about eight o'clock next morning on Sixth Street.

Q. Who was with him?

A. He was by himself.

Q. What was his condition on the 4th of July when you were with him, did he drink any?

A. No, sir.

Q. Was he drunk or sober?

A. He was sober.

Q. And you say you saw him along the next morning, did you have breakfast together?

A. No, me and Mr. Enyert had already had breakfast.

Q. Then what happened?

A. He said he had some business he wanted to tend to—that evening he said he had some business he wanted to tend to.

The Court: Why do you want to show all this again? I don't see any reason taking up the time of this court.

Q. Did he go up to my office?

A. He went up to your office.

Q. Did you go with him?

A. On the 4th of July I did but you was gone.

Q. Did you come up there on the 5th?

A. No, sir.

Q. Did you leave him there in front of the Frisco Building?

A. Yes, sir, he and Mr. Enyert.

Q. Was he sober at that time?

A. Yes, sir.

Mr. Ewert: That is all.

Examination.

By the Court:

Q. How come you to see him there at nine o'clock on the morning of the 4th?

A. Well we all like to go to Joplin; I was up there fooling around

Q. You didn't have any understanding?

A. No, sir.

Q. How come you to stay with him?

A. Him and Mr. Enyert was together and me and Mr. Enyert always run around together.

392 Q. Did he request you to stay with him?

A. No, sir, a fellow likes to have somebody to run around with him.

Cross-examination.

By Mr. Thompson:

Q. You say your name is Cousatt?

A. Yes, sir.

Q. How old are you?

A. Twenty-four.

Q. Married?

A. No, single.

Q. Do you drink?

A. I take a drink once in awhile.

Q. You were in Joplin the 4th day of July, 1918?

A. Yes, sir.

Q. You didn't take any drink?

A. I might have taken one or two.

Q. You were with George?

A. Yes, sir.

Q. He didn't take any drinks?

A. No, sir, he said he had some business to tend to.

Q. What did George do when you went in the saloon?

A. He wouldn't drink with us.

Q. Did he go in the saloons?

A. Yes, sir.

Q. What saloons did you go into?

A. I don't know which.

Q. How many times did you go in?

A. I couldn't tell.

Q. Did you take a dozen drinks that day?

A. No, sir.

Q. Did Enyert go in with you?

A. Yes, sir.

Q. And Redeagle would go in to the bar but he wouldn't drink?

A. No, he wouldn't drink; he said he had some business to tend to and said if he drank and went up to Mr. Ewert's office he couldn't fix it up.

Q. Can you name some saloon you went into that day?

A. Why a good many.

Q. Now Mr. Cousatt you knew Redeagle was a man that would drink?

A. Why he was a man that drank some times.

Q. He was a man that got drunk?

A. I never did see him drunk in my life.

Q. How long did you know him, since your boyhood?

A. Yes, sir.

Q. And you never saw George Redeagle drunk?

A. No, sir.

Q. You never saw him when he was under the influence of liquor?

A. Yes, sir, but I never saw him drunk.

Q. Mr. Cousatt don't you know George Redeagle was a notorious drunkard?

A. All them Indians drink, he wasn't a drunkard; we all drink.

Q. Those full blood Quapaws as a rule don't drink whiskey as rule do they?

A. They are just like white men.

Q. You met him on the morning of the 4th?

A. Yes, sir.

Q. And who was with him?

A. Enyert.

Q. And you stayed with him all day?

A. Yes, sir.

Q. Who asked you to stay with them?

A. Nobody.

Q. You left them about ten o'clock at night?

A. Yes, sir.

Q. Where did you stay that night?

A. On Sixth Street.

Q. Why didn't you stay at that rooming house where George stayed?

A. Because we wanted to run around together.

Q. What kind of a place is that Seventh Street resort where he stayed?

A. I don't know.

Mr. Ewert: We object to the term "resort."

A. He had a room there.

The Court: That is immaterial.

Q. What was the name of it?

A. Well now I couldn't tell you.

Q. On Main Street was it?

A. No, between Main and Joplin.

Q. On Seventh Street?

A. Yes, sir.

Q. Was it a hotel?

A. No, sir, rooming house.

Q. Where did you meet him the next morning?

A. On Sixth Street.

Q. After you had your breakfast?

A. Yes, sir.

394 Q. Did you leave him when he went to Mr. Ewert's office?

A. Yes, sir; he was standing on the corner and Mr. Enyert come up; he was to meet him at eight o'clock. They wanted to go up to attend to some business and asked if I wanted to go and I said no.

Q. Who did the talking Enyert or Redeagle?

A. Redeagle.

Q. Did Enyert go up with him?

A. Yes, sir.

Q. Did Enyert tell you why he went up with him?

A. No, sir.

Q. When did Mr. Ewert first talk to you about this?

A. Me and him haven't had no talk about it.

Q. What was the first time you talked to him about it?

A. Mr. Ewert?

Q. Yes.

A. Why I got a letter from Mr. Ewert wanting me to come up there for a witness.

Q. Have you the letter with you?

A. No, sir.

Q. How long ago was that?

A. Quite awhile ago.

Q. Did you go up and make an affidavit?

A. No, sir.

Q. Did you go up to his office?

A. Mr. Ewert wasn't there.

Q. Since you have known Mr. Redeagle, Mr. Cousatt, has he been a hard working man?

A. He was a man that always had money and he didn't have to work. Some times he done little chores around the house.

Q. Why he was a carpenter wasn't he?

A. I guess he was a little of everything.

Q. Did you ever see him do any carpenter work?

A. He built his house.

Q. That is repairing it?

A. Repairing.

Q. Ever see him do any day labor for anybody?

A. No, not that I know of.

395 Redirect examination.

By Mr. Ewert:

Q. When was the first time you ever saw me that you know of?

The Court: That is immaterial.

Mr. Ewert: That leaves a reflection.

The Court: You had a right to write him a letter to find out about your case.

Mr. Ewert: We rest.

(Witness dismissed.)

Mr. Thompson: I think your honor, Mr. Ewert hasn't finished his testimony.

And thereupon PAUL A. EWERT recalled for further examination testified as follows:

Mr. Ewert: In view of counsel's statement made in court I desire to say I left on my vacation the second day of July, 1918.

Mr. Currey: I object to that; he made a statement of that.

Mr. Ewert: I prepared a stipulation——

The Court: Proceed.

Mr. Ewert: I had arranged to go on my vacation and had my boat engaged two months——

The Court: That is immaterial.

Mr. Ewert: All right. Well I am through.

### Cross-examination.

By Mr. Thompson:

Q. Mr. Ewert you testified here yesterday in explanation of a certain letter that you were preparing a suit against A. Scott Thompson and Judge Vern Thompson in behalf of Blackhawk, did you bring that suit?

A. No.

Mr. Thompson: I believe that is all.

(Witness dismissed.)

Mr. Ewert: We rest.

Mr. Thompson: That is all.

The Court: Now I will tell you what I think the proof shows. I am inclined to adopt the evidence of this Indian Agent that he was an intelligent Quapaw Indian, but that he was profligate and dissipated and that he finally became a drunkard; that he was such during the year 1918. Now as to the legal effect of that I will let you brief that.

Mr. Currey: Well we would like to present authorities on it.

And thereupon the court ordered the evidence transcribed and allowed the parties three weeks in which to prepare briefs, after receiving copies of the transcript, directing them to serve copies upon each other; and allowed ten days after the receipt of such briefs in which to file reply briefs.

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## PLAINTIFF'S EXHIBIT #1.

Paul A. Ewert,  
Attorney and Counselor at Law,  
Erisco Building, Joplin, Missouri.

July 2", 1918.

Mr. George Redeagle,  
Baxter Springs, Kansas.

DEAR SIR:

I met you down in the corridor yesterday afternoon and you wanted to come to my office and settle the case of Redeagle v. Ewert, but as I told you then and say to you now, I will not talk any business to you when you have been drinking. I am leaving the city today to be gone for about six weeks, but I have left a check for Seven Hundred Dollars (\$700.00) here in my office, together with the proper papers for you to sign.

If you will come up to this office sober and in your right mind and want to sign these papers my Clerk will deliver to you the check for \$700.00 as settlement in full of all of our difficulties.

And may I suggest to you, that if you do make this settlement that instead of having this check cashed and getting drunk and losing the money, that you go and deposit the check in some bank and check against it. In that way you won't be so liable to lose the money.

If you desire to make this settlement I suggest that you come to this office at an early date. You can bring with you whomsoever you please, if they are reliable and sober persons. I have stated in my previous letters why I would not settle this case with your attorneys.

398 If you wish to make this settlement, you will have to do so soon, as the offer will be withdrawn.

Yours truly,

(Signed)

PAUL A. EWERT.

P. A. E. : C. H. :



(PLAINTIFF'S EXHIBIT #2.)

Paul A. Ewert,  
Attorney and Counselor at Law,  
Frisco Building, Joplin, Missouri.

July 1", 1918.

Mr. George Redeagle,  
Baxter Springs, Kansas.

DEAR SIR:

In order that there may be no misunderstanding or any mis-statements concerning the matter of the settlement between us of the case of George Redeagle v. Paul A. Ewert, involving the title to the 100 acre tract of land, I will say this:

That Judge Campbell has rendered a decision in this case holding that you are not entitled to recover the land. This opinion was formally filed on the 4th day of March, 1918, although as you know, he stated when I was in his Court six months before that time, what his decision would be, and in fact after that he wrote a formal letter to both counsel stating what his decision had been. This case has not been appealed; nor has any step been taken towards appealing it. and if the time is not already past, it soon will be, when an appeal can be taken. I want you to understand thoroughly what your rights are and just what you are doing.

If you sign this stipulation for dismissal, that ends the case forever, and I am paying you this \$700.00 with the distinct understanding that it does end the case forever.

399 I am asking you to sign the deed herewith so that I may send the same to the Secretary of the Interior for Approval. However, this settlement by the payment of \$700.00 is not conditional upon the Secretary of the Interior approving this deed. If he approves it, well and good—if he doesn't approve it—well and good.

In order that you may keep this money and that it may do you some good, I would suggest to you that you deposit this check in the First National Bank of Joplin, or some other good bank and then check against it. If you cash it and get all the money, you probably will get drunk and lose it and then you will come back and say that somebody has been trying to cheat you.

I am giving you this \$700.00 for this stipulation and dismissal, not that I think I owe it to you, or that the law will give it to you, but by reason of the fact that this suit has clouded my title for several months and has hindered me in the development of the land.

I have instructed my clerk that under no circumstances should she have any dealings with you when you are intoxicated. I just now met you down in the Lobby of this building in an intoxicated

condition and you wanted to come to the office and I told you that I would have nothing to do with you while you were intoxicated. I have advised my clerk to the same effect, and if you are intoxicated when you come into this office I want you to state it, if it cannot be observed; if you have been drinking any when you come into the office I want you to tell my clerk that fact and she will have no business relations with you.

Yours respectfully,

(Signed)

PAUL A. EWERT.

P. A. E.: C. H.

400

(PLAINTIFF'S EXHIBIT #3.)

Paul A. Ewert,  
Attorney and Counselor at Law,  
Frisco Building, Joplin, Missouri.

August 1, 1916.

Mr. Geo. Redeagle,  
Baxter Springs, Kan.

FRIEND GEORGE:

Will you please come to this office next Saturday without fail. I am about to bring a suit in the matter of the Chas. Blackhawk. I know that you did not intend to help swindle Blackhawk because you would not do anything like that.

I want you to come up here Saturday and make a statement of your part in the affair. I am not going to sue you or connect you with the transaction, but I want you to make a statement of just how the thing happened.

Do not fail to come up Saturday.

Yours truly,

(Signed)

P. A. EWERT.

P. A. E.: H. N.

(PLAINTIFF'S EXHIBIT #4.)

Paul A. Ewert,  
Attorney and Counselor at Law,  
Frisco Building, Joplin, Missouri.

January 3", 1918.

Mr. George Redeagle,  
Baxter Springs, Kans.,  
R. F. D. #2.

MY DEAR SIR:

I send you a copy of the opinion rendered by the Court in the case of Redeagle vs. Ewert. I do this, thinking perhaps you

counsel may keep you in ignorance as to what the Court held.  
 You will remember that when you were down at Vinita the  
 01 Court held that you had no case. Thereupon, Currey wept  
 bitterly and asked the privilege of filing brief and getting  
 additional information. The Court has again denied that and again  
 sustained his prior opinion holding that you have no case.

Yours truly,

(Signed)

P. A. EWERT.

P. A. E.: H. N.

(Copy attached to foregoing letter:)

Muskogee, Oklahoma, January 2, 1918.

Mr. W. H. Kornegay, Atty., Vinita, Oklahoma.

Mr. Paul A. Ewert, Atty., Joplin, Missouri.

Mr. A. Scott Thompson, Atty., Miami, Oklahoma.

GENTLEMEN:

After a careful consideration of the briefs filed for both sides in  
 the companion cases of Bluejacket et al. v. Ewert and Red Eagle  
 et al. v. Ewert, Nos. 2299 Equity and 2293 Equity, respectively,  
 tried at Vinita and submitted to the court upon briefs to be filed,  
 entertain the same views expressed at the trial, that on the record  
 made the plaintiffs are not entitled to the relief prayed, and that the  
 bills in each case should be dismissed at plaintiff's costs. The  
 motions to reopen these cases for further testimony, filed and sub-  
 mitted since the cases were submitted, have been considered also  
 and will be overruled. Forms of decree may be prepared and sub-  
 mitted by counsel, saving to plaintiffs in each case such exceptions  
 as they may desire.

Yours truly,

RALPH E. CAMPBELL,  
*Judge.*

02 (PLAINTIFF'S EXHIBIT #5.)

Paul A. Ewert,

Attorney and Counselor at Law,

Frisco Building, Joplin, Missouri.

September 2", 1919.

Mr. George Redeagle,  
 Baxter Springs, Kans.,  
 R. F. D. #2.

FRIEND GEORGE:

I have just returned from Muskogee, Oklahoma, and find that  
 there is on record there an appeal bond in the case of Redeagle v.

Ewert, which was signed, or appears to have been signed by you, appealing the case of Redeagle v. Ewert, and I cannot understand I have always believed that when you were sober you were a man of honor. You came to my office on a number of occasions and wanted to compromise the suit of Redeagle v. Ewert. I repeatedly told you that I would not compromise with your attorneys because of the feeling I had against them, and because of the fact that they induced you to bring this law suit against me, against your will. I told you that you could bring up any of your friends or neighbors, or any other attorney that you wanted, and I would make a settlement with you. You remember that I refused on one or two occasions to make a settlement with you because I thought you had been drinking. I told you I would not make any settlement with you when you had taken a drop of liquor.

You finally came to my office while I was away on my vacation and made a settlement in the presence of honorable and reputable witnesses, you bringing with you your neighbor and friend, Mr. L. Enyert. You made a complete settlement; everything was explained to you; the papers were read over to you; the notary public interrogated you and told you what the effect of the signing of these papers was, and you agreed that you had better take \$700.00 and settle the whole thing, and you settled it.

Now, I do not know whether you know what kind of papers it was that you signed for Currey, but they were appeal papers, asking to have the case appealed to the Circuit Court of Appeals of the United States. I am told that he is also getting you to sign some other papers and affidavits, and I wish to caution you not to sign anything while you are intoxicated, for now you know what kind of attorneys they are. You know that you made an honorable and fair settlement with me, and you ought not to further cloud my title by signing any papers for these unscrupulous attorneys. I have never said anything to you, or written anything to you but what I would say to their faces. I wouldn't talk settlement with them, although it occurred to me that perhaps they were sending you to me all the time. I don't know whether that is true or not. I wouldn't give those fellows a single dollar, or have any business relations with them.

Now, George, you ought not to sign any papers. You made a fair and square settlement with me. You brought your friend, Mr. Enyert, with you to see that you got a square deal. You made a settlement with my Clerk and not with me, and made it in the presence of Mr. J. C. Ammerman, the U. S. Referee in Bankruptcy, and in the presence of other witnesses. Is it fair to me now for you to cloud my title by signing additional papers which these fellows are endeavoring to get to cloud my title or to hinder me in the development of this land?

I hope that you will consider this matter and do the honorable and square thing towards me, after having settled the case in the manner that you did during my absence.

Yours respectfully,

(Signed)

PAUL A. EWERT

(PLAINTIFF'S EXHIBIT #6.)

Paul A. Ewert,  
Attorney and Counselor at Law,  
Frisco Building, Joplin, Missouri.

January 17", 1917.

Julia Crow Redeagle,  
Baxter Springs, Kans.,  
R. F. D. #2.

DEAR FRIEND:

I haven't seen you in a long time and if you want a little money on your lease at this time I will be glad to let you have it. We are putting a drill rig on the ground and will start drilling sometime within the next ten days.

I haven't seen George for a long time and if he wants to come up with you, I will be very glad to have him come. George and I used to be very good friends until evil and designing persons made him do things that I know he didn't want to do. Nevertheless, I have no hard feelings towards him.

Yours truly,

P. A. EWERT.

P. A. E.: C. H.:

05 (DEFENDANT'S EXHIBIT #1.)

in the United States Circuit Court of Appeals for the Eighth Circuit.

No. 5315.

JOHN S. KENDALL, as Administrator for the Estate of George Redeagle, Deceased, et al., Appellants,

vs.

PAUL A. EWERT, Appellee.

Appeal from the United States District Court for the Eastern District of Oklahoma.

*Notice to Produce.*

To the appellants in the above-entitled cause and each of them and their attorneys, H. W. Currey and A. Scott Thompson:

Notice is hereby served upon you and each of you that you have and produce at the hearing to be made and had under and pursuant to the terms of that certain order made January 6, 1919, by the Cir-

cuit Court of Appeals of the United States in the above entitled action for the purpose of determining the circumstances of the procuring of the stipulation for dismissal of the above entitled cause, filed in the United States District Court for the Eastern District of Oklahoma on July 17, 1918,—to be held before the Honorable Robert L. Williams, Judge of the United States District Court in and for the Eastern District of Oklahoma, on the 7 day of April, 1919, at nine o'clock a. m. or as soon thereafter as the same may be heard by said Court, the following letters, documents and papers, to-wit:

1. The original of that certain letter dated March 20, 1918, directed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, which said letter was mailed to the said George Redeagle on or about the date named, advising the said Redeagle of the decision of the Court in the matter of Redeagle v. Ewert, and other things.

2. The original of that certain letter dated April 29, 1918, addressed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, concerning the contemplated settlement of the suit of Redeagle v. Ewert dismissed by Judge Campbell.

3. The original of that certain letter dated June 27, 1918, addressed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, dealing with the contemplated settlement with George Redeagle of the suit in question.

4. The original of that certain letter dated July 2, 1918, addressed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, dealing with the contemplated settlement of the suit of Redeagle v. Ewert, dismissed by Judge Campbell.

5. The original of that certain letter dated July 1, 1918, addressed to George Redeagle, Baxter Springs, Kansas, signed by Paul A. Ewert, dealing with the contemplated settlement of said suit.

Each and all of said original letters being letters written by Paul A. Ewert and mailed to the said George Redeagle at the place named, at or on the time they bear date, the same being necessary, essential and material in the trial and hearing in the above entitled cause.

If you fail to so produce the originals of said above named letters as above requested, in Court at the time and place named, the appellee will offer secondary evidence, to-wit: Duplicate carbon copies thereof and oral testimony where required.

Dated this 4 day of April, 1919.

407 (Signed)

PAUL A. EWERT,  
*Appellee and Attorney for Appellee.*

Service of the above and foregoing Notice to Produce and receipt of a true and correct copy thereof, is hereby acknowledged, this day of April, 1919.

\_\_\_\_\_  
\_\_\_\_\_  
*Attorneys for Appellants.*

STATE OF MISSOURI,  
County of Jasper, ss:

Cora Hallam, of lawful age, being first duly sworn, upon oath deposes and says that she is the law clerk of Paul A. Ewert, the Appellee and Attorney for Appellee in the above entitled cause; that on Saturday, the 5th day of April, 1919, she served the above Notice to Produce upon said above named Appellants and their attorneys, H. W. Currey and A. Scott Thompson, by calling at the office of H. W. Currey in the city of Joplin, Missouri, and there leaving with one Paul Bradley, who is associated in the practice of law with the said H. W. Currey, a true and correct copy of said Notice to Produce, the said H. W. Currey being at said time absent from his law office and absent from the city of Joplin; the said Paul Bradley being the person in charge of the law office of the said H. W. Currey, attorney for the Appellants above named. Further affiant sayeth not.

(Signed)

CORA HALLAM.

Subscribed and sworn to before me this 5th day of April, 1919.

[SEAL.]

(Signed)

PAUL A. EWERT,

Notary Public, Jasper County, Missouri.

My commission expires April 20, 1922.

408 (Endorsed:) Filed Apr. 7, 1919. R. P. Harrison, clerk  
U. S. District Court.

(DEFENDANT'S EXHIBIT #2.)

Inclosure 24338 from Office of Indian Affairs, Department of the Interior.

Department of the Interior,  
Office of Indian Affairs,  
Washington, March 8, 1919.

I, E. B. Meritt, Assistant, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.]

(Signed)

E. B. MERITT,

Assistant Commissioner.



## Department of the Interior,

Washington.

*Order.*

Pursuant to the Act of Congress approved June 7, 1897 (30 Stat. L., 62, 72), relating to allottees and allotments in the Quapaw Agency, Oklahoma, I hereby declare George Redeagle competent to improve and manage properly and with benefit to himself the lands acquired by him through allotment or inheritance.

It is hereby ordered and directed that the said George Redeagle be so regarded. Accordingly, such lands may be leased, by proper leases, for all purposes authorized by said act, without supervision by the Secretary of the Interior.

Neither this nor any other order affecting the competency of any Indian of the Quapaw Agency shall be construed as a relinquishment of, or to militate against, the supervision of the Government over unpartitioned inherited lands subject to restrictions upon alienation if such supervision is required by the status of any one of more of the heirs thereto.

S. G. HOPKINS,  
*Assistant Secretary.*

Dated Apr. 5-1918.

## (DEFENDANT'S EXHIBIT # 3.)

Inclosure 41550 from Office of Indian Affairs, Department of the Interior.

Department of the Interior,  
Office of Indian Affairs,  
Washington, Jan. 31, 1919.

I, E. B. Meritt, Assistant Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this Office to be affixed, on the day and year first above written.

[SEAL.]

(Signed)

E. B. MERITT,  
*Assistant Commissioner.*

Address only the Commissioner of Indian Affairs.

Refer in reply to the following: Land-Sales 67384-18. B. D. S.

5-1100.

Department of the Interior,  
Office of Indian Affairs,  
Washington, Sep. 27, 1918.

For File.

The Honorable the Secretary of the Interior.

Sir:

I have the honor to transmit herewith the application of George Redeagle, Quapaw allottee No. 134-144 for unconditional removal of restrictions from the N. W./4 of N. W./4 of Sec. 28, and the N. E./4 of N. E./4 of Sec. 29, T. 29, N., R. 24 East I. M. in Oklahoma, containing 80 acres.

The applicant is a full-blood Indian, 53 years of age, who has attended school for about eight years. His occupation is farming and carpenter trade. He desires to sell this land and use the money for the improvements of his home and repairing of his property.

The Superintendent reports that he is a man of good character and reputation, industrious and self-supporting from the rentals and royalties and by his own efforts as a carpenter. He writes and speaks English and has transacted his own business for more than 20 years. The Office concurs in the Superintendent's recommendation for the removal of restrictions unconditionally. The allottee has about 400 acres of inherited land, besides the land described in his application. The estimated value of this land is unknown, for the reason that it lies in the mineral belt, but no known deposits of mineral exist.

Respectfully,

(Signed)

C. F. HAWKE,  
Chief Clerk.

F. W. H. 9-23.

Approved Sep. 30, 1918.

(Signed) S. G. HOPKINS,

Assistant Secretary.

411

*Order for the Removal of Restrictions.*

Department of the Interior,  
Washington, D. C., Sep. 30, 1918.

Number —.

Allottee No. 134-144.

Whereas, George Redeagle, an allottee of the Quapaw Reservation, Quapaw Agency, Oklahoma, has made application for the removal of restrictions from the following described land, to-wit: N. W./4 of N. W./4 Section 28 and N. E./4 of N. E./4 of Section 29, Tp. 29 N. Range 24 E. of the Indian Meridian,

Now, therefore, I, under authority vested in me by the Act Congress approved March 3, 1909 (35 Stat. 751), and the regulations prescribed thereunder, hereby remove the restrictions from said above described land without conditions concerning terms of sale and disposal of the proceeds; said removal of restrictions to be effective thirty days from date hereof.

S. G. HOPKINS;

*Assistant Secretary of the Interior.*

Office of Indian Affairs. Received Aug. 12, 1918. 67384.

(DEFENDANT'S EXHIBIT #4.)

(Carbon copy of letter.)

April 29, 1918.

Mr. George Redeagle,  
Baxter Springs, Kans.,  
R. F. D. —.

DEAR SIR:

My Clerk advises me that you were in the office during my absence at Washington and wanted to make settlement in accordance with the letter I wrote you sometime ago.

I am sorry that I was not here, but as I said before, if you want to make a definite date, say for next Saturday, the 4th day of May, 1918, I will be here. You can come up here next Saturday forenoon. You can bring with you any reliable responsible business man or person that you want to bring, but as stated in my previous letter, I will not do business with your attorneys. They "snitched" this case. They have dealt unfairly with me, and I do not propose to have any business relations with them. I stated my opinion of them in my previous letter.

However, you can have anyone else come with you that you want provided that both you and the man you bring with you be perfectly sober. I won't do any business with you, George, if you have had a single drink or are not perfectly sober.

I still hold open my offer of \$500.00 for a full and complete settlement of the case of Redeagle vs. Ewert. I expect to be away from the office next week for sometime, I don't know when I will be back in the office again, because I have eight cases to try at Muskogee, but I will be here on next Saturday, May 4th, 1918, if you want to come up then.

Yours truly,

(Signed)

PAUL A. EWERT.

P. A. E.: C. H.:

(DEFENDANT'S EXHIBIT #5.)

in the District Court of the United States in and for the Eastern District of Oklahoma.

Number 2293-E.

GEORGE REDEAGLE, Plaintiff,

vs.

PAUL A. EWERT, Defendant.

*Stipulation for Dismissal.*

It is hereby stipulated and agreed between the plaintiff in the above entitled action, George Redeagle, and the defendant therein, Paul A. Ewert, that the above entitled action shall be and hereby is dismissed, with prejudice, this 5<sup>th</sup> day of July, 1918.

[June,]\*

And the party of the first part further certifies that said suit was not voluntarily instituted by him, but he was solicited and induced to institute said suit against the defendant by certain parties who desired to injure the said Paul A. Ewert and cloud his title in and to the lands involved in said suit; that he, said plaintiff, was taken to the office of A. Scott Thompson and there solicited and induced to permit the use of his name in the bringing of said suit.

(Signed)

GEORGE REDEAGLE,

*Plaintiff.*

(Signed)

PAUL A. EWERT,

*Defendant.*

We, the undersigned, do hereby certify that we were present when the above Stipulation for Dismissal was read over and signed by the said George Redeagle; that at the time of the signing thereof it was fully explained to him that the effect of the signing thereof was to dismiss the said suit so that it could not again be instituted; that the said George Redeagle was at said time and place possessed of all of his faculties, and was sober and conversed intelligently and appeared to have full knowledge of what he was doing and the consequences of his said actions.

(Signed)

J. C. AMMERMAN.

(Signed)

I. E. ENYERT.

(Endorsed:) In the District Court of the United States for the Eastern District of Oklahoma. George Redeagle, plaintiff, vs. Paul A. Ewert, defendant. No. 2293-E. Stipulation for dismissal. Filed Jul. 17, 1918. R. P. Harrison, clerk U. S. District Court. 3/479.

## (DEFENDANT'S EXHIBIT #6.)

5-183. Quit claim deed inherited lands.

(Stamped: Office of Indian Affairs. Received Jul. 16, 1911  
59363.)

This indenture, made and entered into this 5th day of July one thousand nine hundred and Eighteen, by and between George Redeagle, Widower, of Ottawa County, State of Oklahoma, one of the heirs of Huldah Quapaw White, Quapaw Allottee Number 2, deceased, a Quapaw Indian, party of the first part, and Paul A. Ewert of Joplin, Missouri, party of the second part:

Witnesseth, That said party of the first part, for and in consideration of the sum of Seven Hundred (\$700.00) Dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto said party of the second part the following described real estate and premises situated in Ottawa County, State of Oklahoma, to wit: The East One-half (E./2) of the Southeast Quarter (S. E./4), and East One-half (E./2) of the Southwest Quarter (S. W./4) of the Southeast Quarter (S. E./4) of Section Twenty-one (21), Township Twenty-nine (29), Range Twenty-three (23), East of the Indian Meridian, together with the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators, and assigns, forever.

415 In witness whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed)

GEORGE REDEAGLE. [SEAL.]

Witnesses:

(Signed) J. C. AMMERMAN.

(Signed) I. E. ENYERT.

(\$1.00 documentary stamp.)

(Acknowledgments must be in accordance with the form prescribed by the State or Territory in which the land is situated.)

STATE OF MISSOURI,

*County of Jasper, ss:*

Be it remembered, that on this 5th day of [June]\*July, A. D. 1918, before the undersigned, a Notary Public in and for the County of Jasper, State aforesaid, personally appeared George Redeagle, Widower, personally known to be the identical person who executed

[\*Words enclosed in brackets erased in copy.]

within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof, I have hereunto subscribed my name and affixed my Notarial seal on the day and year 1st above written.

[SEAL.] (Signed) STELLA DE HONEY,  
Notary Public, Jasper County, Missouri.

My commission expires March 8, 1919.

(Endorsements:) Department of the Interior, Office of Indian Affairs, — — —, 190-. The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved. — — —, [Chief Clerk]\* Commissioner. Department of the Interior, — — —, 190-. The within deed is hereby approved. — — — [Assistant]\* Secretary. Office of Indian Affairs, Land Division, — — —, 190-. Recorded in Deed Book, Inherited Indian Lands, Vol. —, page —. 6089. Quit claim deed from George Redeagle, Widower, to Paul A. Ewert, State of Oklahoma, Ottawa County. This Instrument Filed for record Dec. 4, '18, 1.25 P. M., and Recorded in Book 69, page 36. J. A. Walker, Co. Clk. J. A. Riley, Dep. Paul A. Ewert, Joplin.

(DEFENDANT'S EXHIBIT #7.)

Joplin, Mo., July 5, 1918. No. 1211.

The First National Bank of Joplin, Missouri, Pay to George Redeagle or order \$700.00 Pay \$700 and 00 cts Dollars.

(Signed)

PAUL A. EWERT,  
By CORA HALLAM,  
Clerk.

(Stamped across face:) Paid 7-3-18.

(Endorsed:) (Signed) George Redeagle.

(DEFENDANT'S EXHIBIT #8.)

STATE OF MISSOURI,  
County of Jasper, ss:

I, E. Enyert, being first duly sworn, upon oath deposes and says that he is the same I. E. Enyert, who on the 5th day of July, 1918, was in the Law Office of Paul A. Ewert in the city of Joplin, Missouri, and there signed as a witness to a certain stipulation entered into between the said George Redeagle and Paul A. Ewert in the suit of Redeagle v. Ewert; that on the day prior thereto down

at the home of the said George Redeagle in Ottawa County, Oklahoma, the said George Redeagle came to this affiant and asked him to go with him to Joplin, Missouri, for the purpose of making  
 417 a settlement with the said Paul A. Ewert; that the said Redeagle told this affiant that he could get Seven Hundred dollars by making a settlement of said suit; that affiant doubted it, but Redeagle produced a letter from Ewert wherein Ewert said that he would give the said Redeagle Seven Hundred Dollars for a settlement in full of said suit; that affiant thereupon went to the city of Joplin, Missouri with the said George Redeagle; that on the 4th day of July, 1918, he brought the said George Redeagle to Joplin, Missouri; that affiant did not come at the solicitation of Paul A. Ewert; that Paul A. Ewert had never talked with said affiant about this matter at all and he did not see Paul A. Ewert and has had no conversation with him concerning this matter until today; that on the 5th day of July, 1918, affiant, with the said George Redeagle at the solicitation of the said George Redeagle, went to the Law Office of Paul A. Ewert, in the Frisco Building, Joplin, Missouri; that the said George Redeagle was sober as he could be on said day and that he had drank nothing on that day nor on the day before; that affiant was with the said George Redeagle almost continuously during the said two days; that when they came into the law office of Paul A. Ewert they there met the Clerk of Paul A. Ewert and the Clerk advised Mr. Redeagle in the presence of this affiant that Paul A. Ewert was away on his vacation in New York or somewhere, and would not return for several weeks; that thereupon the said Clerk exhibited to the said George Redeagle a certain Stipulation settling the said case of Redeagle v. Ewert; that George Redeagle voluntarily signed the stipulation, but before he signed it the said Clerk read it to him and also the said deed and explained the same to him thoroughly and asked the said George Redeagle if he understood it, and George Redeagle said "yes, he did." Then  
 418 thereupon, the said Clerk called in J. C. Ammerman, Attorney and Referee in Bankruptcy in the United States Court; that thereupon the said Ammerman explained the said stipulation to George Redeagle and told Redeagle that that ended the case, and George Redeagle said that he knew it did; that the said George Redeagle signed the said papers freely and voluntarily and the said Clerk then gave the said George Redeagle a check for Seven Hundred dollars and told him he had better go and put it in the bank where it would be safe.

That this affiant had not seen Paul A. Ewert and has never had a conversation with him concerning this matter until today, and affiant freely and voluntarily makes this statement, and if called upon to do so, will swear to the above facts as set forth herein, in any court of law. That this affiant has never received any money or promise of any kind from the said Paul A. Ewert, and is not concerned in this business transaction between Ewert and George Redeagle and never has been.

Affiant further says that on this day he without solicitation from the part of Paul A. Ewert, came to Ewert's office with George Redeagle



agle and the above statement was given to the said Paul A. Ewert in the presence of the said George Redeagle; that after he made the said statement to Ewert the said Redeagle left the office before it was transcribed and signed, but heard all of the above statements and the affiant asked Redeagle if they were all true, and Redeagle stated "yes, they are." Further affiant sayeth not.

(Signed)

I. E. ENYERT.

Subscribed and sworn to before me this 14th day of  
19 October, 1918.

[SEAL.]

(Signed)

STELLA DE HONEY,

Notary Public, Jasper County, Missouri.

My commission expires March 8, 1919.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Dec. 1, 1920.

20 (*Exceptions of Appellants to Findings and Conclusions of District Court under Order of Reference of This Court.*)

in the United States Circuit Court of Appeals for the Eighth Circuit.

No. 5315.

JOHN S. KENDALL, Administrator, etc., et al., Appellants,

VS.

PAUL A. EWERT, Appellee.

Now come the appellants, by their attorneys, A. Scott Thompson and Hiram W. Currey, and except to the findings and conclusions of Judge Williams made under the order of this Court on the motion of the defendant to dismiss the appellants' appeal, and for such exceptions say:

I.

That the findings of the said Judge Williams are erroneous because the transactions by which the compromise was effected was and is void from the fact that it was a transaction based on the transaction set up in the plaintiff's petition, which was and is void as contrary to public policy.

II.

Because Judge Williams in considering the evidence treated the same as a transaction between parties sui juris, whereas one of the parties (the appellant) was a Quapaw tribal Indian, and his conduct and transactions are not to be measured by the same standard as those of white men, and all the evidence in this case showed that this Indian was and had been for a number of years an habitual drunkard and his faculties weakened thereby.

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## III.

Because the evidence shows that this Indian and Ewert did not deal on equal terms, but it was shown that Ewert, by letters to the Indian and personal solicitation through a white woman, induced the Indian to come to his office to make the transaction, and that Ewert induced him to make the transaction without consulting his counsel and the Indian was in a state of intellectual stupor from excessive drinking when the transaction was made, and it was shown that the Indian did not understand the meaning of the terms used in the transaction, and that it was falsely represented to the Indian that the case was pending and undetermined in the District Court and could be there dismissed.

## IV.

The finding is contrary to the evidence.

## V.

The legal conclusions of Judge Williams are erroneous and contrary to both the law and the evidence.

A. SCOTT THOMPSON,  
HIRAM W. CURREY,  
*Attorneys for Appellants.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals Dec. 1, 1919

422     *(Answer of Appellee to Appellants' Exceptions to Findings and Conclusions of District Court.)*

'Comes now the appellee in his own proper person, and making reply to the exceptions of appellants to the findings of the Honorable Robert L. Williams, Judge of the United States District Court for the Eastern District of Oklahoma that the stipulation on file in said case was obtained without fraud or undue influence and was intended to be and was in fact a full and final settlement and dismissal of the case, says:

## I.

That as to appellants' Exception Number I which is as follows:

"That the findings of the said Judge Williams are erroneous because the transaction by which the compromise was effected was and is void from the fact that it was a transaction based on the transaction set up in the plaintiff's petition, which was and is void and contrary to public policy."

appellee says that the question attempted to be raised by said exception is not and cannot be in the case, the sole question being whether or not the plaintiff in the suit has the right to dismiss a suit which he himself has instituted. That is the only question in the case. The plaintiff did sign a stipulation for dismissal and had a right to dismiss the suit if he had a right to institute it.

The question of public policy does not enter into the question referred to Judge Williams. The sole question is whether or not the dismissal was obtained without fraud and was intended by the said plaintiff to be and was a dismissal of the suit.

There could be no more sweeping indictment against the good faith of the charges made by appellants' attorneys than the findings of Judge Williams based upon the evidence which they themselves adducted.

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## II.

Appellants' second exception is as follows:

"Because Judge Williams in considering the evidence treated the same as a transaction between parties sui juris whereas one of the parties (the appellant) was a Quapaw tribal Indian, and his conduct and transactions are not to be measured by the same standard as those of white men, and all the evidence in this case showed that this Indian was and had been for a number of years an habitual drunkard and his faculties weakened thereby."

Making answer thereto, appellee shows to this Court that there is nothing in the opinion of Judge Williams which would warrant any statement made by the appellant's counsel, and Judge Williams found contrary to the above contention of the appellants that George Redeagle was competent; that he was sober; that he knew what he was doing; that he was an intelligent, Quapaw Indian; that he had a right to sign the stipulation for dismissal; that the said stipulation was not obtained by fraud and that he intended it to be a dismissal of the suit. His findings were verified by the testimony and acts of two Indian Agents and by the acts of the Secretary of the Interior, in — at the identical time the act occurred, declaring George Redeagle competent and removing the restrictions from a portion of his land. The testimony of the former Indian agent being that when Redeagle was sober he knew exactly what he was doing, "as well as you or I." Even the testimony of the appellants' witnesses was to like effect.

## III.

Appellants' Exception Number III is as follows:

"Because the evidence shows that this Indian and Ewert did not deal on equal terms, but it was shown that Ewert, by letters to this Indian and personal solicitation through a white woman, induced the Indian to come to his office to make the transaction, and that

424 Ewert induced him to make the transaction without consulting his counsel, and the Indian was in a state of intellectual stupor from excessive drinking when the transaction was made, and it was shown that the Indian did not understand the meaning of the terms used in the transaction, and that it was falsely represented to the Indian that the case was pending and undetermined in the District Court and could be there dismissed."

Making answer to the above exception the appellee says that Judge Williams found the testimony contrary to said statements above set forth, in every respect, and that appeared to be his conclusion at the close of the plaintiff's testimony, before Ewert had introduced any evidence whatsoever. That Ewert then introduced the evidence of the Secretary of the Interior which was to the effect that the Secretary, at the identical time the stipulation for dismissal was signed, found that George Redeagle was competent and intelligent and industrious and entitled to have the absolute care and control of all his property. The testimony of the Indian Agent himself who had known Redeagle for many years, was to like effect.

The testimony further shows that Ewert by letter and by word of mouth on a number of occasions told Redeagle he would make a settlement with him unless Redeagle would bring to Ewert's office any lawyer he might choose, except Currey or Thompson, or any business man, and that he would then talk settlement with him. That Redeagle did bring with him his own tenant, a reputable white man, and made the settlement at Ewert's office during Ewert's absence in the East, through Ewert's clerk, Miss Cora Hallam, and that the settlement was made in the presence of reputable and responsible persons, to-wit: J. C. Ammerman, the Referee in Bankruptcy and I. E. Enyert, Redeagle's own selected friend and business adviser; that Redeagle, who was an educated, intelligent Indian, knew what he was doing and signed the stipulation for dismissal with the intention of settling and dismissing said suit.

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## IV.

## Appellants' Exceptions # IV and V.

Appellants' Exceptions Number- IV and V are that the findings of Judge Williams are contrary to the evidence and that the legal conclusions of Judge Williams are erroneous and contrary to both the law and the evidence.

Making answer thereto, appellee shows to the Court that these exceptions cannot be considered by this Court; that there was substantial evidence to support the findings and conclusions of Judge Williams, beyond a shadow of doubt. The testimony of the Indian Agent who had known Redeagle for many years and who testified that he was the most intelligent Indian in the whole Agency, and that he knew exactly what he was doing when he was sober; that his intellect had not been weakened by drink; and the finding of the Secretary of the Interior upon an investigation made at the time

the stipulation for dismissal was signed, that Redeagle was competent and able to manage his own affairs and that his restrictions were absolutely removed in accordance with that finding, is sufficient to support the findings and conclusions of Judge Williams.

Appellee further shows to this Court that in preparing their brief on this question which has been submitted to the Court, that the appellants have been unfair, with the deliberate intention of misleading this Court by attempting to get into the argument on the findings of Judge Williams, a discussion of the pleadings and the evidence on the main question itself, to-wit: On the merits of the main question. The purpose and intent thereof being to bring before this Court the entire question on its merits. In the first few pages of their brief they have attempted to discuss the findings of Judge Williams, and after a most unfair and misleading fashion, falsely state the contents of the petition and falsely mis-state the evidence. For instance, on page 5, where they make the following statement:

"Plaintiff offered to prove, through the witness, A. W. Abrams (Rec. p. 116), that Ewert exercised an influence over the Quapaw Indians, and offered to prove by the same witness (rec. p. 86), that he was present in Ewert's official office in Miami, Oklahoma, when Ewert attempted to induce Redeagle to sell said land for less than it was really worth. This upon objection was excluded by the Court, the Court holding that the plaintiff was not permitted to prove the assumed authority or activity of Ewert as an official of the Government; that plaintiff was confined to the powers of the said Ewert as set forth in his letter of commission."

This statement is absolutely false. The only thing that occurred was that plaintiff asked leave, almost at the close of the trial, to amend his petition. The record in that respect is as follows (Red., p. 86):

Mr. Currey: "Your Honor, we ask leave to amend our petition by interlineation, by inserting between the word "interior,"—I think in the fourth line from the bottom of the petition on page 4, the following: 'That just before the sale of said land, the plaintiff was told in the presence of the defendant that his land, was worth \$25 per acre, and thereafter the defendant told the plaintiff he was a fool for thinking of getting that amount, or, words to that effect, and that his land was not worth more than \$12 or \$13 per acre.'"

Mr. Ewert: "We object to that, Your Honor, at this time.

The Court: The amendment will not be permitted at this time because it is a departure from the theory of the petition heretofore filed, in the midst of the trial. Take your exceptions.

Mr. Thompson: We except."

Plaintiff's petition, in the first instance, contained many false allegations. No attempt was made to prove any of them and the public records show conclusively that they were all false. Contrary to the statement contained in appellants' brief, they did not offer to

produce any such evidence. They asked leave of the Court to amend the petition. The purpose of asking leave of the Court to amend, in the language in which they made it, was for the purpose of prejudicing the Court. They had no such evidence and could not have adduced it, because Ewert never, before the execution of the deed, talked with Redeagle concerning the sale of the land. Under the rules and regulations, the Secretary of the Interior appraises the land and the Indian allottee by those same rules, has the right to reject any sale that may be made by the Department. In other words, he doesn't have to sign the deed.

There are many such false allegations and statements in appellants' so-called brief, and they, like the allegations of the petition are wilfully and falsely made.

Appellee further shows to the Court that the sole question now before this Court is that of determining whether or not there was any substantial evidence upon which Judge Williams might find as a matter of fact, that the stipulation for dismissal was, as it appears upon its face, made with the intention of dismissing said suit.

Respectfully submitted.

PAUL A. EWERT.

*Appellee and Attorney for Appellee.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals Dec. 1, 1919

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*(Order of Submission.)*

December Term, 1919.

Monday, December 1, 1919.

This cause came on this day to be heard upon the notice and motion of the appellee to dismiss the appeal herein, which is renewed after the hearing on his former motion to dismiss resulted in the reference of this cause back to the said District Court for investigation of the circumstances of the stipulation for the dismissal of the suit entered into between the appellant, Redeagle, now deceased, and the appellee, Ewert, and the District Court having reported to this Court its findings and conclusions and the appellants having filed exceptions thereto, said matters are now argued by Mr. Paul A. Ewert Pro se, and Mr. Hiram W. Currey for the appellants; and therefore this cause is by the Court taken as submitted on the said several matters and the transcript of the record from said District Court and the briefs of counsel filed on the merits.

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(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1919.

No. 5315.

JOHN S. KENDALL, Administrator of the Estate of George Redeagle, Deceased, and Josephine Abrams, Le Roy Redeagle, and Doane Redeagle, Children and Heirs-at-law, in the Place and Stead of George Redeagle, Deceased, Appellants,

vs.

PAUL A. EWERT.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Monday, March 1, 1920.

This cause came on to be heard on the transcripts of the records from the District Court of the United States for the Eastern District of Oklahoma, the motion of appellee to dismiss the appeal, the findings and conclusions of said District Court under the order of reference of this Court, etc. and the exceptions of appellants, and was argued by counsel.

Upon consideration of the motion of the appellee to dismiss the appeal in this cause on the ground that this suit was compromised and settled by the agreement of the parties before the appeal was taken, and upon a consideration of the finding of Honorable R. L. Williams, United States District Judge, that the stipulation of compromise and settlement on which the motion is founded was valid "and in fact and in law is a final settlement of the issues involved" in this suit, and upon a reading and consideration of the evidence on which that finding is based and the arguments and briefs of counsel,

It is hereby, ordered, adjudged and decreed that the appeal in this cause be, and it is hereby, dismissed with costs; and that Paul A. Ewert have and recover against John S. Kendall, Administrator of the Estate of George Redeagle, deceased, and Josephine Abrams, Le Roy Redeagle and Doane Redeagle, children and heirs at law, in the place and stead of George Redeagle, deceased, the sum of twenty dollars for his costs herein, to be collected according to law.

March 1, 1920.



*(Petition of Appellants for a Rehearing.)*

To the Honorable the Judges of the United States Circuit Court of Appeals, Eighth Circuit:

The appellants herein request a rehearing and reargument on the judgment in the above cause rendered on the 1st day of March, 1920. No written opinion was filed, but an order of this court was filed dismissing the appeal. Appellee filed a motion to dismiss on the ground that he had effected a settlement with Redeagle pending appeal. The appellants contested the motion on the ground that the settlement had been obtained unfairly and fraudulently and could in no event be effective because it was at the most an attempt to ratify, confirm and compromise a void, illegal and prohibited act and was therefore void. The matter was referred to Judge Williams to take testimony thereon; testimony was taken, and Judge Williams reported the testimony with findings. The appellants filed exceptions to the findings of Judge Williams, and upon hearing contended that the findings made by Judge Williams were not sustained by the evidence and as a matter of law no settlement could be made of this controversy because the original transaction, the deed, was an illegal and prohibited act, and no ratification or compromise could be made that would give any virtue to the deed. At the oral argument herein the court asked counsel for petitioners if we contended that the evidence taken by Judge Williams failed to support his finding, recognizing that this court is required to examine the testimony and draw its own conclusions therefrom. The presiding justice also agreed to our statement that a void and illegal act could not be cured by settlement or compromise. The court's memorandum order of dismissal of appeal leaves us in the dark as to reasons therefor. We assume that the court acted on one of two theories: First, that the appeal should be dismissed because it was settled; or second, that the appellants were barred by statute of limitation of the State of Oklahoma and laches.

We ask a rehearing and reargument on the following grounds:

1. That the court failed to give due consideration to the evidence taken before Judge Williams, and erred as a matter of law in concluding (if it ruled on such theory) that this cause could be adjusted by settlement so as to vest title in Ewert and divest Redeagle of his Indian restricted land in violation of an express act of Congress (Section 2078, Revised Statutes of the United States).
2. That if the court dismissed the appeal on the theory that Redeagle was barred by the statute of limitation and laches, as the court held in its written opinion filed the same day in cause 5316 Bluejacket et al. v. Paul A. Ewert, where the same question was raised as here, then the court erred—

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(a) Because the question of bar of statute or by laches could not be raised on motion.

(b) Because the conclusion of this court in the Bluejacket case, precluding the adult plaintiffs on account of the bar of the statute of limitations and laches, was erroneous.

(c) The transaction being void and illegal, no compromise could give virtue or life to the prohibited act of taking the deed.

\* \* \* \* \*

We, Hiram W. Currey and A. Scott Thompson, hereby certify that we are counsel for the petitioners and that in our opinion the above and foregoing petition for rehearing interposed in the above styled case, and each and every part thereof, is well founded on point of law and is proper to be filed and considered by this court, and that such petition is offered in good faith and not for delay.

HIRAM W. CURREY.  
A. SCOTT THOMPSON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Apr. 24, 1920.

*(Order Denying Petition for Rehearing.)*

May Term, 1920.

Friday, June 4, 1920.

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellants.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

June 4, 1920.

432 *(Petition for and Order Allowing Appeal to Supreme Court U. S. and Assignment of Errors.)*

To the Honorable the Judges of the  
Circuit Court of Appeals of the United  
States, for the Eighth District:

The above named appellants, John S. Kendall, Administrator of the Estate of George Redeagle, deceased, Josephine Abrams, Le Roy Redeagle and Doane Redeagle, heirs at law of George Redeagle, deceased, feeling themselves aggrieved by the order, judgment and decree rendered and entered in the above entitled cause on the 1st day of March, A. D. 1920, and made final by an order overruling the appellants' motion for re-hearing, entered June 4th, 1920, do hereby appeal from said order, decree and judgment to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors, filed herewith, and marked Exhibit "A," and they pray that their appeal be allowed and that citation be issued as provided by law; and, that a transcript of the record, proceedings and documents upon which said order, judgment and decree was based, duly authen-

ticated, be sent to the Supreme Court of the United States, sitting at Washington, District of Columbia, under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required be made.

JOHN S. KENDALL, *Adr.*;  
JOSEPHINE REDEAGLE,  
LE ROY REDEAGLE,  
DOANE REDEAGLE,  
By HIRAM W. CURREY,  
*Attorneys for Appellants.*

Now, on this 23rd day of August, 1920, on motion of Hiram W. Currey, Solicitor and Counsellor for complainants, it is hereby  
433 ordered that the Appeal to the Supreme Court of the United States from the order, judgment and decree filed and entered herein, be and the same is hereby allowed, and that a certified copy of the transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of One Thousand —.

KIMBROUGH STONE,  
*Circuit Judge.*

\* \* \* \* \*

#### EXHIBIT A.

#### *Assignment of Errors.*

Now comes the complainants and appellants in the above entitled cause, John S. Kendall, Administrator, Josephine Abrams, Le Roy Redeagle and Doane Redeagle, and in connection with their petition for appeal to the Supreme Court of the United States, say that in the record and proceedings and in the final order, judgment and decree in said cause entered, manifest errors have intervened to the prejudice of these appellants, and these appellants in said cause now file the following assignment of errors upon which they will rely upon prosecution of their appeal from the judgment, order and decree made by this Honorable Court on the 1st day of March, 1920, and made final by overruling the motion for re-hearing, filed in this court on the 4th day of June, 1920.

#### I.

434 The suit was brought by George Redeagle, a full blood Quapaw Indian, of the Quapaw tribe, and he duly appealed the case to this court and it was there revived in the name of his administrator and heirs. By the suit, plaintiff, George Redeagle, sought to have adjudged null and void a deed of conveyance made

by said Indian, which purports to convey to Paul A. Ewert, appellee, the title to 100 acres of land in Ottawa County, Oklahoma, the alienation of which is prohibited by Acts of Congress. The petition charges, and the answer admits that at the time appellee—Paul A. Ewert—purchased said restricted lands, he was a Special Assistant Attorney General of the United States and engaged in prosecuting suits in the name of the United States to set aside certain character of deeds of Quapaw Indian allot-ees in Ottawa County, Oklahoma; that he is in possession of said land under said deed, and the suit is bottomed on the public policy of the United States, as ordained by the Revised Statutes of the United States, Section 2078, which provides that

"no person employed in Indian affairs shall have any interest or concern in any trade with the Indians."

and in the Circuit Court of Appeals the appellee, Paul A. Ewert, filed motion to dismiss the appeal, on the ground that he had compromised and settled the case with the Indian allot-ee. The Circuit Court of Appeals entered an order directing the Judge of the United States District Court, for the Eastern District of Oklahoma to take the testimony on the motion and report to this Court its findings, whether in fact and law the stipulation set up in the appellee's motion to dismiss was a final settlement of the suit of the said George Redeagle. This was grievous error against the rights of appellants, since the alienation of the lands involved were restricted by the Acts of Congress, and the defendant's answer admitted that he was a Special

Assistant Attorney General of the United States and engaged, 435 at the time of the purchase of said land, in the prosecution of suits in the name of the United States, to set aside Indian deeds to restricted Quapaw Indian lands, and as the contract of purchase from said Quapaw Indian by said Special Assistant Attorney General of the United States, engaged in Indian affairs, was prohibited by the said public policy of the United States, any contract or agreement of compromise or ratification of said contract was likewise contrary to the public policy of the United States, and void, and these appellants were entitled, as a matter of law, to have the judgment of the trial court reversed and a decree setting aside the deed upon the allegations of the petition and the admissions in the answer of the appellee, such order was erroneous.

## II.

The Court of appeals committed grievous error against the right of these appellants, in that it entered the order of dismissal without any opinion being filed or any reasons being assigned for dismissing appellants' said appeal, and thereby adopted the report of the Judge of the District Court of the United States for the Eastern District of Oklahoma, that said compromise was, in fact and in law, a compromise and settlement of the controversy between the said Indian allot-ee and the said Paul A. Ewert was entitled to keep and retain

the said land under his said deed, since Paul A. Ewert was prohibited from obtaining said title by the terms of the aforesaid Section 2078, Revised Statutes of the United States; whereas, it was the duty of said Circuit Court of Appeals to determine, on its own judgment

(a) whether said purchase of Paul A. Ewert of said restricted land from said Quapaw Indian al-ot-ee, while he was employed in Indian affairs as a Special Assistant Attorney General of the

United States and whether the deal he so obtained was void because illegal; and, (b) whether the compromise plead in appellee's motion for dismissal was a contract that could be legally entered into and whether said alleged settlement was, in law or fact, a settlement of this suit and entitled the said Paul A. Ewert to keep and retain said Indian restricted lands.

### III.

The court committed error against the rights of these appellants because the order dismissing appellants' appeal is based on the findings of the Judge of the District Court of the United States for the Eastern District of Oklahoma, that Paul A. Ewert, as claimed in his answer, had obtained the permission of the Attorney General of the United States and of the Secretary of the Interior, to purchase the said land from said Indian while he was Assistant Attorney General of the United States and engaged in Indian affairs, and neither the said Attorney General of the United States nor the Secretary of the Interior, had any power, right or authority to authorize the said Paul A. Ewert to so purchase the said restricted Indian lands, and the court erred in holding that said Attorney General and Secretary of the Interior had such power and authority.

### IV.

The appellee's motion to dismiss the appeal was based on the statement therein, that he had compromised with the Indian, and that the order sustaining the motion to dismiss was equivalent to a holding by the Circuit Court of Appeals that the appellee could enter into a valid contract of compromise with the Indian to keep and retain the land, even though the land had been purchased by appellee in violation of the provisions of the public policy of the United

States and this was erroneous.

### V.

The Court of Appeals committed grievous error against the rights of the appellants in this, that the said Court of Appeals sustained the appellee's motion to dismiss the appellants' appeal without examining or considering the evidence which had been taken under the order of the court by the District Judge of the Eastern District of Oklahoma, and adopted the erroneous conclusion of said Judge, that said compromise was, in fact and in law, a settlement of said suit, and in so doing disregarded the mandate of the Acts of Congress, 40th Statute, 1181, which requires said Court of Appeals

"to give judgment after examination of the entire record before the court,"

thus denying the appellants the benefit of such examination; whereas, in truth, the evidence so taken and filed by the said Judge of the District Court of the Eastern District of Oklahoma, shows that the stipulation obtained by the appellee upon the compromise set up in his motion to dismiss, was obtained by fraud and over-reaching of the said Indian and by falsely representing to said Indian that his time for appeal had elapsed and that his counsel had deserted his case.

## VI.

The record (page 82) recited:

"This cause was heretofore, on March 15, 1917, consolidated for trial with the case of Carrie Bluejacket, et al., vs. Paul A. Ewert, this defendant, Equity No. 2299, and the evidence in said cause, Equity No. 2299, considered as the evidence in this cause."

On appeal, the Bluejacket case was decided by the Circuit Court of Appeals concurrent with the order dismissing the complainants' appeal in this case; and, in the opinion in the Bluejacket vs. Ewert case, the Circuit Court of Appeals held that Ewert's purchase 438 was within the condemnation of United States Revised Statutes, Section 2078, and void.

So that it is certain that the appeal in this case was dismissed, either on the grounds of laches, statute of limitations; or, on the grounds that the compromise of the contract inhibited by express statute is not affected by the fact that the original contract was illegal.

And upon either ground the Circuit Court of Appeals committed grievous error against the rights of the appellants in said order of dismissal.

Wherefore, these appellants pray that the order, judgment and decree of the Circuit Court of Appeals, dismissing appellants' appeal be reversed and that this court, upon the record in this case, enter its judgment directing said Circuit Court of Appeals to reverse the judgment of the trial court and enter a decree as prayed for in plaintiff's petition filed in said trial court and made part of the record on appeal to said Circuit Court of Appeals and upon appeal to this Court.

A. SCOTT THOMPSON AND  
HIRAM W. CURREY,  
*Attorneys for Appellants.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 26, 1920,

439 (Bond on Appeal to Supreme Court U. S.)

Know all men by these presents, that we, John S. Kendall Administrator, Josephine Abrams, Le Roy Redeagle and Doane Redeagle as principals, and The Aetna Casualty and Surety Company of Hartford, Connecticut, as sureties, of the County of Ottawa, State of Oklahoma, are held and firmly bound unto Paul A. Ewert in the sum of \$1,000.00, lawful money of the United States, to be paid to him, his executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors, administrators and assigns, by these presents.

Sealed with our seal and dated this 23d day of August, 1920.

Whereas, the above named, John S. Kendall, Administrator, Josephine Abrams, Le Roy Redeagle and Doane Redeagle, have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the United States Circuit Court of Appeals for the Eighth District in the above entitled cause;

Now, therefore, this obligation is such that if the above named John S. Kendall, Administrator, Josephine Abrams, Le Roy Redeagle and Doane Redeagle shall prosecute their appeal to effect and answer all damages and costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

JOHN S. KENDALL, *Adm.*;  
JOSEPHINE ABRAMS,  
LE ROY REDEAGLE,  
DOANE REDEAGLE,

By H. W. CURREY,  
*Attorney.*

[Seal of Aetna Casualty and Surety Co.]

THE AETNA CASUALTY AND SURETY  
COMPANY,

By R. E. CLINE,  
*Attorney-in-fact.*

440 The within bond is approved both as to sufficiency and form.

August 23rd, 1920.

KIMBROUGH STONE,  
*Justice.*

(Power of Attorney of Aetna Casualty and Surety Co. to R. E. Cline Attached to Original Bond.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals Aug. 26, 1920.



41 In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 5315.

JOHN S. KENDALL, Administrator of the Estate of George Redeagle, Deceased; Josephine Abrams, Le Roy Redeagle, and Doane Redeagle, Appellants,

vs.

PAUL A. EWERT, Appellee.

To Paul A. Ewert, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, District of Columbia, on the 22<sup>st</sup> day of September, 1920, pursuant to an order allowing an appeal, filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, from the final order, judgment and decree signed, filed and entered on the 4<sup>th</sup> day of June, 1920, in that certain suit, being in Equity, No. 5315, wherein John S. Kendall, Administrator, Josephine Abrams, Le Roy Redeagle and Doane Redeagle are Appellants, and you are Appellee, to show cause, if any there be, why the decree rendered against said Appellants, as in said order allowing the appeal mentioned, should not be granted, and why justice should not be done to the parties in that behalf.

42 Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this the twenty-third day of August, 1920, and of the Independence of the United States the one hundred and forty-fourth.

KIMBROUGH STONE,  
United States Circuit Judge.

Copy of above received this 9<sup>th</sup> day of September, 1920.

PAUL A. EWERT.

[Endorsed:] No. 5315. John S. Kendall, as administrator, etc., et al., appellants, vs. Paul A. Ewert. Citation on appeal to Supreme Court U. S., with acknowledgment of service. Filed Sep. 14, 1920. E. E. Koch, clerk.

443 (*Præcipe of Appellants for Transcript on Appeal to Supreme Court, U. S.*)

The Clerk of the Circuit Court of Appeals of the United States for the Eighth Circuit is hereby directed to prepare certified transcript of the record in the above entitled cause for the use of the Supreme Court of the United States, including the following:

1. Copy of this præcipe.

2. The entire record as printed and used in this court.
3. Motion of appellee filed in this court, praying that the appellants' appeal be dismissed.
4. The order of the court showing the death of George Redeagle and the revivor in the name of his personal representative.
5. The order of the court directing the Judge of the United States District Court for the Eastern District of Oklahoma to investigate the circumstances of the dismissal of the suit filed in the District Court and certify whether the settlement set up in appellee's motion to dismiss was in fact and law a settlement of the appellants' suit.
6. All the evidence taken and certified to this court, under the order of this court, by the Judge of the United States District Court for the Eastern District of Oklahoma, together with exhibits attached thereto.
7. The findings and recommendation of Judge Williams transmitted with such evidence.
8. Appellants' objections and exceptions taken to the findings and recommendation of said Judge Williams.
9. The order of the court submitting said cause on briefs.
10. The order, judgment and decree dismissing the appellants' appeal.
11. The order filing the appellants' motion for rehearing.
- 444 12. The appellants' motion for rehearing.
13. The order overruling said motion for rehearing.
14. The order for the mandate.
15. The mandate.
16. The petition for appeal and order allowing appeal to the Supreme Court of the United States and assignments of errors there with filed.
17. Citation and acknowledgement of service thereon.

H. W. CURREY AND  
A. SCOTT THOMPSON,  
*Attorneys for Appellants.*

Receipt of a copy of the above is admitted as of this date, to-wit: September 21st, 1920.

P. A. EWERT,  
*Appellee.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals Sep. 27, 1920.

445 (*Appellee's Objections to Appellants' Præcipe for Record on Appeal to the Supreme Court U. S. and Præcipe for Additional Portions of the Record.*)

Appellee shows to the Court that under date of September 21", 1920, the appellants delivered to the appellee a copy of a certain paper, entitled, "Appellants Amended Præcipe" purporting to be a præcipe for a transcript of the record in the above entitled case on appeal to the Supreme Court of the United States, and this appellee now shows to the Court and the Clerk thereof that appellants' Præcipe is improper and insufficient, in the following respects, to-wit:

1. In Paragraph 2 of their præcipe, appellants ask that the entire record as printed and used in this Court be used on appeal as an entirety, and appellee shows to the Court and the Clerk thereof, that the same is improper, under the rules of the Supreme Court of the United States, in this: That the said printed record includes many matters that are immaterial and improper on appeal and serve only to encumber the record, in the following respects, to-wit:

The testimony of W. M. Smith, found on pages 120 and 121 of the printed record, down to the words, "Have you been associated with anybody in Baxter Springs," etc., found at the top of page 122 of said record—for the reason that all of said testimony relates to the value of another tract of land and is not relevant or pertinent to anything in this case.

2. Appellee shows to the Court and the Clerk thereof that plaintiff's Exhibits 2 to 9, inclusive, found on pages 149 to 155, together with pages 123 to 126 inclusive of said printed record, are improper, because it affirmatively appears from said pages 123 to 126, inclusive, that all of said Exhibits 2 to 9, inclusive, were expressly ruled  
446 out by the trial Court and were not considered in the case on appeal and cannot be considered by the Supreme Court on appeal.

3. Appellee objects to including in the record on appeal all of pages 156 to 165 inclusive of said printed record, because all of said matters are matters that occurred in the trial of the case of *Carrie Bluejacket v. Paul A. Ewert*, and are not in this case at all.

4. It further appears that pages 134, 135 and 136 of said printed record relate to incompetent evidence, and was upon objection of the defendant, ruled out, and not allowed by the trial Court, and that the so-called newspaper articles which were alleged to have been published, were in fact never made Exhibits in said case on appeal because they were not furnished and put into the record as printed.

5. Appellee asks that all of said matters be not made a part of the record, but be expunged.

6. By Paragraph 8 of appellants' præcipe, they ask to have incorporated in the record on appeal, "Appellants' Objections and Excep-

tions Taken to the Findings and Recommendations of Judge Robert Williams," and if this is the paper filed December 1, 1919, Appellee has no objection thereto, but in order to present the record fairly, appellee asks that there be inserted and made a part of the record on appeal, the answer of the appellee to appellants' objections, which said answer was filed in this Court about December 14, 1919. Appellee therefore requests that said paper entitled "Answer of Appellee to Appellants' Exceptions to Findings and Conclusions of the Honorable Robert L. Williams, Judge United States District Court for the Eastern District of Oklahoma," be incorporated in this record on appeal as necessary and essential thereto.

7. Appellee further requests that there be incorporated in said record made a part of the record on appeal, as necessary and essential to the determination of the issues herein involved, the motion to dismiss the appeal, and motion to strike from the appeal docket, together with notice thereof, served upon the appellants by the appellee under date of November 13, 1919 and filed in this Court on or about November 14, 1919, the same being a renewal of the former motion to dismiss, made and filed after the report made in this Court by the Honorable Robert L. Williams.

8. In Paragraph 12 of appellants' amended præcipe, they ask that there be incorporated in the record the appellants' motion for rehearing. Appellee has no objection to the incorporation of that motion in the record on appeal, provided it does not include the brief and argument attached thereto. Appellee however, does object to the incorporation in said record of anything other than the motion itself, upon the ground that the argument and the brief thereon are no part of the motion and cannot properly be incorporated therein.

Will the Clerk of this Court please incorporate in said record on appeal to the Supreme Court all those things asked for by appellants except where the objections to certain portions thereof are made as above, and in addition thereto, incorporate into and make a part of said record the additional matters above requested.

Dated this 25th day of September, 1920.

PAUL A. EWERT,  
*Appellee, pro Se.*

Service and receipt of a copy of the within paper is hereby admitted this 25 day of September, 1920.

H. W. CURREY,  
*Attorneys for Appellants.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals Sep. 25, 1920.

*(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the præcipes of counsel, in a certain cause in said Circuit Court of Appeals wherein John S. Kendall, Administrator of the Estate of George Redeagle, deceased, et al., were Appellants and Paul A. Ewert was Appellee, No. 5315, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

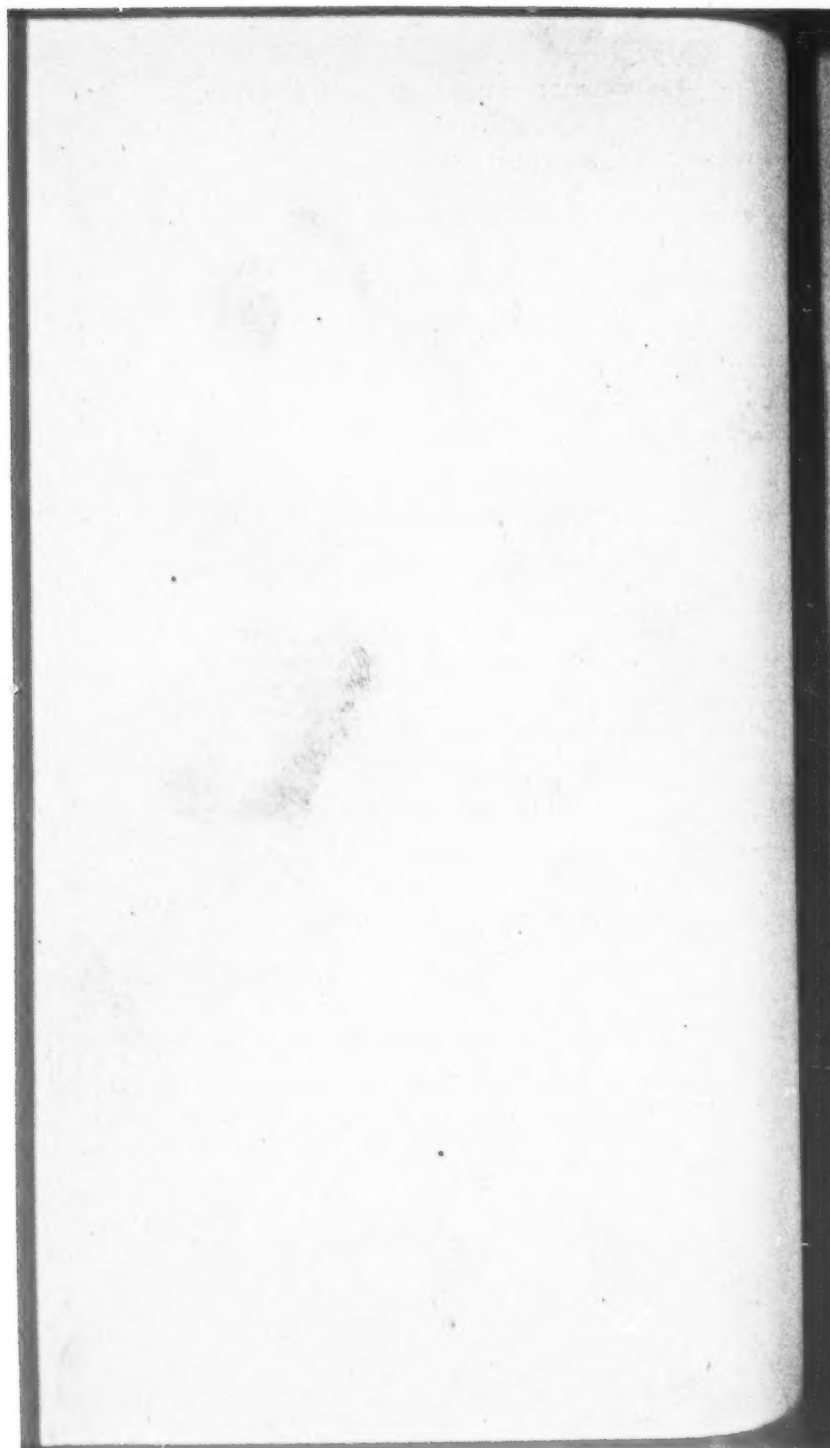
I do further certify that on the twelfth day of June, A. D. 1920, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the Eastern District of Oklahoma.

In testimony whereof, I hereunto subscribe my name and affix seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this sixteenth day of October, A. D. 1920.

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,  
*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Endorsed on cover: File No. 27,949. U. S. Circuit Court Appeals, 8th Circuit. Term No. 592. John S. Kendall, administrator of the estate of George Redeagle, deceased, et al., appellants, vs. Paul A. Ewert. Filed October 22d, 1920. File No. 27,949.



Office Supreme Court U. S.

FILED

DEC 27 1921

WM. R. STANSBURY

CLERK

No. 157.

IN THE

# Supreme Court of the United States

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JOHN S. KENDALL, ADMINISTRATOR, ETC.,  
ET AL., APPELLANTS,

VS.

PAUL A. EWERT, APPELLEE.

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ON APPEAL FROM THE CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

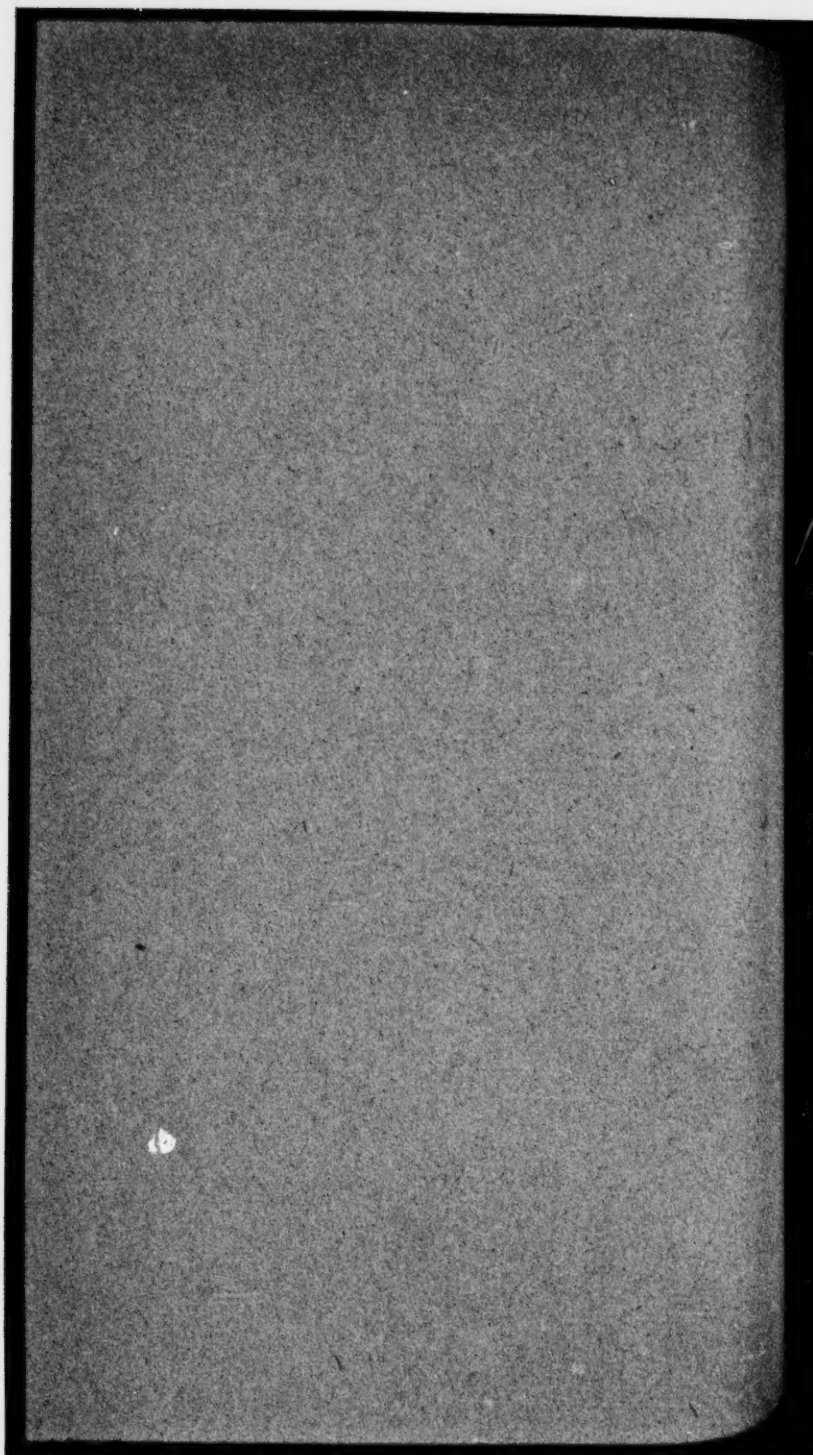
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STATEMENT, BRIEF AND ARGUMENT OF  
APPELLANTS.

---

ARTHUR S. THOMPSON,  
Miami, Oklahoma,  
*Attorney for Appellants.*





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**No. 157.**

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**IN THE**  
**Supreme Court of the United States**

---

JOHN S. KENDALL, ADMINISTRATOR, ETC.,  
ET AL., APPELLANTS,

VS.

PAUL A. EWERT, APPELLEE.

---

ON APPEAL FROM THE CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

---

**STATEMENT, BRIEF AND ARGUMENT OF  
APPELLANTS.**

---

**STATEMENT.**

The appellants' intestate filed his petition in the District Court of the United States for the Eastern District of the State of Oklahoma, on the 19th day of May, 1916, against the appellee, Paul A. Ewert. The petition (Record, pp. 2-11), charges that the plaintiff was a full-blood Indian of the Quapaw Tribe, and living in Ottawa

County, Oklahoma, and that the defendant, Paul A. Ewert, was a citizen and resident of Joplin, Missouri, and that the suit involved more than three thousand dollars, exclusive of interest and costs, and involved the construction of Acts of Congress relating to the alienation of Indian lands. That part of the lands involved in this action was allotted to Huldah Quapaw White, a Quapaw Indian. That she received a patent from the United States Government for said lands, with restriction against alienation for a period of twenty-five years from the 26th day of September, 1896. That said Huldah Quapaw White died while in possession of said lands, leaving the plaintiff, George Redeagle, as one of her heirs at law. That the lands involved in this action were duly partitioned and set apart to said George Redeagle, as his portion and share of said allotment as an heir at law. That prior to March 10, 1909, and subsequent thereto, the defendant, Paul A. Ewert was specially commissioned by the Attorney-General of the United States as a Special Assistant Attorney-General, with commission to act as such officer in and for the Quapaw Agency, State of Oklahoma, a part of which is the Quapaw Reservation, where these lands are located. That said Paul A. Ewert was employed in Indian affairs to enforce and require due observance by all white persons of the Acts of Congress enacted for the benefit of the Indians. That said Paul A. Ewert, while acting as such official, advertised the fact that he was here for the purpose of representing the Government and protecting the Indians and their property. That the said defendant, while acting in such capa-

city, secured one Franklin M. Smith to bid upon the sale of the interest of said George Redeagle in said allotment of land being advertised by the Indian Agent in said Quapaw Agency, and that said Franklin M. Smith, acting as the agent and dummy of said defendant, did bid upon said lands the sum of thirteen dollars per acre, and said lands were duly sold to said Franklin M. Smith, acting in such capacity. That in all such transactions said Franklin M. Smith acted for and in behalf of said Paul A. Ewert, and that the said Paul A. Ewert did conceal from said Indian Agent, the Honorable Commissioner of Indian Affairs, and the Honorable Secretary of the Interior that he was in fact the real purchaser. That the said Paul A. Ewert furnished the necessary money for the purchase of said land, and that said deed was submitted to the Department of the Interior for approval, and same was approved by said Secretary of the Interior without knowledge that said Paul A. Ewert was the real purchaser therein named. That said lands were at the time of sale worth at least twenty-five dollars per acre, and that the said Paul A. Ewert well knew such fact and withheld such information from the Indian Commissioner or the Secretary of the Interior, and that such approval was obtained by deceiving and misleading the Secretary of the Interior and the Honorable Commissioner of Indian Affairs in these particulars, and that said deed would not have been approved if the Secretary of the Interior or the Indian Commissioner should have known that this defendant was in fact the real purchaser. That subsequent to the approval of said deed same was duly recorded, and

said Franklin M. Smith deeded same to this defendant. That all of his acts were done at the instance of Paul A. Ewert, while he was acting in his official capacity in representing the Government in the protection of the Indians and their allotted lands, and that the said Paul A. Ewert was wholly disabled and disqualified from acquiring said property or in any way being concerned in trade with the Quapaw Indians. That said Paul A. Ewert took possession of said land and has been in possession ever since, and that said lands are now of the reasonable value of \$75,000.00. That such lands have become extremely valuable by reason of the discovery of large and rich deposits of lead and zinc ore thereon.

That such conduct on the part of the defendant was a breach of said official's fiduciary relation to this plaintiff, and in violation of his obligation and oath as an Assistant Attorney-General of the United States. That the rental value of said lands was \$200.00 per annum. That this defendant has borrowed upon said land the sum of \$1750.00, and executed a mortgage thereon to secure said loan to the Deming Investment Company. That said mortgage has been duly assigned to the Passumpsic Savings Bank. And the plaintiff prays that the court decree that the defendant hold the title to said land in trust for the plaintiff, and that the defendant be required to account for the \$1750.00 received by him upon the mortgage and for rental value of \$200.00 per annum, during his possession thereof.

There is attached to this petition the deed made by George Redeagle to the defendant, showing its approval

by the Secretary of the Interior, together with a quitclaim deed from Franklin M. Smith to Paul A. Ewert.

This is the substance of the plaintiff's petition. The defendant answered (R. 11-38) admitting the execution of the deed by said George Redeagle, admitting that he was duly commissioned as Assistant Attorney-General of the United States, and set out in his answer the letter of commission; and further admitted the allegation that Franklin M. Smith was his agent, and that Ewert in fact was the purchaser, and that Smith had no interest in the purchase whatsoever, except to lend his name to such transaction. That Ewert furnished the money and procured the sale to Smith for Ewert's behalf. The defendant further denies the rental value as alleged, admits the mortgage, and denies that he was disqualified from dealing with Quapaw Indians, and the purchase of their lands, and denies the value as alleged.

The answer contains a great deal of matter which is scandalous, immaterial and surplusage; and it would serve no purpose to set out same herein. The real issue in the case is whether or not Ewert was qualified to deal with the Quapaw Indians and to purchase lands from these wards of the Government while acting in his official capacity, and whether or not his conduct in dealing through Smith, a dummy, was not a fraud upon the Indian Department and Secretary of the Interior.

On the 15th day of March, 1917, the cause came on for trial before the Honorable Ralph E. Campbell, Judge of the United States District Court for the Eastern District of Oklahoma. The evidence was given, argument

was offered thereon, and the court took the matter under advisement upon submission of briefs. Before rendering judgment the plaintiff filed with the trial court his motion to reopen and set aside the submission of the cause and to permit plaintiff to file an amended petition, setting out as grounds therefor that plaintiff had discovered certain records in the office of the Indian Commissioner in Washington, D. C., concerning the approval of the deed mentioned in this transaction, as well as the Bluejacket deed, showing that Ewert had obtained the approval of the Redeagle deed, as well as the Bluejacket deed, involved in another suit now before this court, by misrepresentation, and withholding of important facts concerning same, from said Department. Said motion set out copies of these records, consisting of correspondence, and there was attached to said motion certified photographed copies of the correspondence, and same was delivered to the trial court and considered by him upon said motion.

That on the 4th day of March, 1918, the trial court (Record, p. 82), entered an order overruling the motion of plaintiff to set aside the submission and permit an amended petition to be filed, allowing the plaintiff an exception, and entered judgment thereafter for the defendant, and decreeing that the plaintiff take nothing by his suit. An appeal was duly taken.

At the trial of this cause the plaintiff offered, through witness W. M. Smith, to show letters written by the defendant as Special Assistant Attorney-General of the United States prior to the time that he purchased

the Redeagle land through his dummy, Franklin M. Smith, threatening prosecution of said W. M. Smith and his associates if certain farm or other Indian leases were not canceled. These letters, consisting of five or six, were excluded by the court, and they are found in the Record, pp. 149-156.

The real questions in this case are: First, was Ewert disqualified, by reason of his official capacity and being engaged in Indian Affairs, from dealing with said Quapaw Indians in the purchase of their lands? and second, was said deed and the approval thereof secured by fraud on the part of Ewert in misleading and concealing the fact that he was the real purchaser thereof?

The trial court rendered judgment on March 4, 1918, and thereafter, and on July 5, 1918, Ewert secured the signature of the appellant to a stipulation for dismissal and caused same to be filed with the clerk of the District Court at Muskogee, Oklahoma, on the 20th day of July, 1918. *This was all done without the knowledge of the appellant's counsel*, and the attention of the trial court was never called to the filing of this stipulation, *and no action was taken thereon by the trial court*. Within the time allowed by law the appellant perfected his appeal to the Circuit Court of Appeals of the Eighth Circuit and same was duly docketed as Cause No. 5315 Equity. Upon suggestion of the death of appellant the cause was revived in the name of these appellants. Afterwards the defendant, Ewert, filed a motion in said court of appeals for the dismissal of the cause, and upon presentation thereof this court entered an order directing the judge



of the District Court to take testimony, with directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said court on the 20th day of July, 1918, and report the findings and the evidence whether in fact and in law said stipulation is a final settlement of the case. In due time Judge Williams heard the testimony offered in such matter, the testimony was transcribed, and Judge Williams made his certificate of findings of fact, and same, together with the evidence, was lodged with said appellate court. The appellants filed their exceptions to the findings and conclusions of Judge Williams.

The whole matter was submitted to the Circuit Court of Appeals in briefs and oral arguments. The parties in oral argument and briefs submitted argued to the Court (1) the motion to dismiss the appeal of appellant, (2) the exceptions of appellant to recommendations of Judge R. L. Williams acting as a master, and (3) the merits of the controversy.

The appellants contended in the Court of Appeals that the motion to dismiss the appeal could and should not be considered ahead of the consideration of the main question presented on the merits of the suit sought to be dismissed by stipulation secured by appellee from the full-blood Indian. Appellants claimed that the original purchase by appellee was prohibited by Act of Congress, Section 2078 Revised Statutes of the United States:

"No person employed in Indian Affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United

States; and any person offending herein, shall be liable to a penalty of five thousand dollars, and shall be removed from his office."

And further claimed that by reason of his peculiar employment and association with the Quapaw Indians and the trust imposed upon him the transaction of purchase by appellee was in violation of the public policy of the United States. Appellants contended that if they were right in these contentions, then the act of purchase was not only void, but illegal and could not be compromised, ratified or settled by a purchased stipulation of settlement, and therefore it would be necessary to consider the merits of the controversy sought to be appealed before passing on the merits of the motion to dismiss the appeal of appellants.

After consideration the Circuit Court of Appeals (R. 357) caused to be entered an order dismissing the appeal of appellants. The order recites it is based upon the consideration of the evidence on which the finding of Judge R. L. Williams was made. No written opinion was filed. No opinion was expressed by the Court on the main question involved. The Court did, however, on the same date, March 1, 1920, file an opinion in *Blue-jacket v. Ewert* (involving the same questions) and *Blue-jacket v. Ewert* is now before this court on appeal and cross-appeal, being numbered 173 and 186. The opinion of the Circuit Court of Appeals in the Bluejacket-Ewert case is found in 265 Fed. 823. In this opinion the purchase of Ewert is held to be within the condemnation of the statute and the deed is ordered cancelled as to minor

grantors and litigants, but relief is denied the adult appellants on the *ground of laches* in bringing the suit. The opinion in the Bluejacket case having been filed on the same day as the appeal herein was ordered dismissed, the appellants here assume that the Court was of the opinion that laches barred the intestate of the appellants herein.

Appellants filed petition for rehearing (R. 358) in due time and same was denied. Thereafter an appeal was taken to this court by appellants. The appellee thereupon filed herein a motion to dismiss upon the ground that this court obtained no jurisdiction because the judgment of the Circuit Court of Appeals was not appealable, but if jurisdiction were obtained then the appeal should be dismissed because of the settlement above mentioned. Briefs in support of and in opposition to the motion to dismiss were filed and the Clerk of this Court advises the undersigned counsel that the motion was continued for further argument at the hearing of the case upon the merits.

Appellants contend:

- First. That Ewert was disqualified from purchasing these Indian lands while occupying the position he did, and any conveyance taken by him is not only void but illegal.
- Second. That the conveyance being void and illegal and within the condemnation of Acts of Congress (R. S. Sec. 2078), it is a nullity, the restriction against alienation remained on the land, and no statute of limitation applies and no doctrine of laches is imputable to the Indian owner of this restricted land.

- Third. The original transaction being void and illegal, it is against public policy, and no compromise, ratification or settlement can be based thereon.
- Fourth. The testimony taken by Judge R. L. Williams sitting as a master does not sustain the recommendations and appellants' exceptions thereto should have been sustained.
- Fifth. Appellee's motion to dismiss appeal herein should be overruled.

Because the Circuit Court of Appeals filed no opinion herein we are assuming the Court was of the opinion that Redeagle was by his delay barred in equity from maintaining this suit. We assume this because the same court took that position in the companion case, *Bluejacket v. Ewert*, where the same question was presented and opinion filed the same date this cause was ordered dismissed.

This cause was tried at the same time *Bluejacket v. Ewert* (now in this court) was tried, and by agreement and order of the trial court (R. 90) the evidence in the Bluejacket case was, in so far as it concerned the official capacity of appellee, to be made a part of this record. This will account for testimony herein concerning the Bluejacket controversy.

## ERRORS ASSIGNED.

### I.

The court erred in failing to find and adjudge as a matter of law that the transaction whereby appellee acquired a conveyance to the restricted lands in question from the full-blood Quapaw Indian was not only void, but illegal.

### II.

The court erred in excluding the appellants from the relief demanded by application of the doctrine of laches on account of the delay of the appellants' intestate in bringing the suit, and this is because: If appellee were disqualified from dealing with the Indian, his deed was void, no title passed, and the restriction against alienation remained on the land, and laches is never chargeable to a restricted Indian.

### III.

The court erred in considering and sustaining the motion to dismiss of appellee on the ground that a settlement was made, because under the pleadings and admissions of the appellee therein, he, appellee, was within the condemnation of Revised Statutes, Section 2078, and the public policy of the United States, and being so, no ratification, settlement, compromise or deed with the wronged Indian can give any life or validity to the condemned original act and the taint remains.

## IV.

The court erred in sustaining motion to dismiss of appellee on the ground of laches on the part of intestate Redeagle, because the application of such a doctrine to this full-blood restricted Indian has the effect of permitting the Indian to be divested of title to his restricted land in direct violation of Acts of Congress and the established public policy of the land.

## V.

The court erred in overruling the exceptions of appellants to the findings of the master on the motion to dismiss. The exceptions were (R. pp. 351-2) as follows:

## I.

That the findings of the said Judge Williams are erroneous because the transactions by which the compromise was effected was and is void from the fact that it was a transaction based on the transaction set up in the plaintiff's petition, which was and is void as contrary to public policy.

## II.

Because Judge Williams in considering the evidence treated the same as a transaction between parties *sui juris*, whereas one of the parties (the appellant) was a Quapaw tribal Indian, and his conduct and transactions are not to be measured by the same standard as those of white men, and all the evidence in this case showed that this Indian was and had been for a number of years an habitual drunkard and his faculties weakened thereby.

## III.

Because the evidence shows that this Indian and Ewert did not deal on equal terms, but it was shown that Ewert, by letters to this Indian and per-

sonal solicitation through a white woman, induced the Indian to come to his office to make the transaction, and that Ewert induced him to make the transaction without consulting his counsel, and the Indian was in a state of intellectual stupor from excessive drinking when the transaction was made, and it was shown that the Indian did not understand the meaning of the terms used in the transaction, and that it was falsely represented to the Indian that the case was pending and undetermined in the District Court and could be there dismissed.

IV.

The finding is contrary to the evidence.

V.

The legal conclusions of Judge Williams are erroneous and contrary to both the law and the evidence.

VI.

The court erred in denying the petition of appellants for a rehearing.

VII.

The court erred in refusing to receive in evidence plaintiffs' Exhibits 2, 3, 4, 5, 6, 7, 8 and 9 (R. 149-156).

These exhibits are letters written by appellee herein as "Special Assistant to the Attorney General," and most of them were written prior to the purchase of the lands in question. They were offered by Redeagle for the purpose of showing over the signature of appellee that his duties had been extended beyond that expressed in his letter of commission. Without going into detail we quote Exhibit 2 (R. p. 149) as a sample of the evidence excluded.



"Address reply to  
 'The Attorney General'  
 and refer to  
 Initials and Number.

.....  
 .....

Department of Justice.  
 Washington.

Miami, Oklahoma,  
 January 19th, 1909.

Mr. Wesley M. Smith,  
 Baxter Springs, Kansas.

Dear Sir:

I find in going over the abstracts as I continue the work looking to the clearing of the Paupaw titles, that you and other persons have quite a number of leases that, in the opinion of the Government, are not lawful leases, to-wit: agricultural leases that are given for a greater period than ten years, or leases given for the lawful period of three and ten years respectfully which, by their terms are to begin at the expiration of some other lawful lease at some date in the future.

It ought not be necessary for me to take up each allotment and write you a personal letter concerning each of these leases as I find them. I believe that I have now done my full duty to you in writing you in as many instances as I have, asking for a cancellation of what the Government claims are unlawful leases. Will you not now be kind enough to go over your entire list of holdings in the matter of agricultural and mining leases and ascertain what leases you have coming under the above class of unlawful leases, and when you have ascertained the fact, will you not include all of such leases in a general cancellation, describ-

ing each particular tract, that these encumbrances may be removed from all lands in the Quapaw Agency, as far as you are concerned.

I am writing a like letter to all other persons and companies holding that class of leases and I assure you that the Government will play no favorites in these proceedings. It is my purpose to 'hew to the line and let the chips fall where they may.' I would thank you very much to comply with the above request and have your cancellation sent to the Register of Deeds at the earliest possible moment, because I would like to have them on record before Friday of this week. In my endeavor to free the records of these many encumbrances before bringing suit and to give all parties due notice of the position of the Government, I have delayed the bringing of suits to quiet titles and remove clouds from these Indian allotments, to a time when I fear that the attorney General is becoming impatient. I hope you will see your way clear to act along the line above suggested at the earliest possible date.

Be kind enough to make a carbon copy of the release that you execute and send the same to me at the time that you send the original to the Register of Deeds. I enclose a form which you may use if you desire. Of course, if you have many leases you will have to use this form but run off your cancellation on the machine.

Yours truly,

(Signed) PAUL A. EWERT,  
Special Assistant to the  
Attorney General.

Enc.  
MWP''

This rejected testimony was competent and very material because appellee was claiming that his sole authority prior to taking the Redeagle deed, March 10, 1909, was to institute certain suits to set aside certain deeds to Indian lands. Appellee testified to this fact under oath (R. 131), while these letters completely refuted such testimony and established the fact as plead in the petition, that he, Ewert, was commissioned generally to look after and care for the interest and lands of these Quapaw Indians.

#### VIII.

The court erred in refusing upon motion of Redeagle to reopen the case before judgment was announced, to permit plaintiff to submit new and additional evidence showing the fraud of the appellee upon the Secretary of the Interior and the improper use of influence upon such officer through the office of the Attorney General of the United States. This motion and accompanying exhibited letters are found in the Record at pages 38 to 59.

## BRIEF AND ARGUMENT.

### I.

**The transaction, whereby appellee, Ewert, through his agent, Smith, obtained the Redeagle deed, was a nullity, void and an unlawful act.**

Appellants contend that appellee was "engaged in Indian Affairs" when this purchase was made and that he came clearly within the condemnation and prohibition of Revised Statutes 2078 hereinbefore quoted and was therefore disqualified from purchasing from or contracting with this Indian.

Appellee will contend that he was not "engaged in Indian Affairs" although an Assistant Attorney General of the United States and prosecuting suits for and on behalf of the Indians and even if he were within said statute he had permission of the Attorney General to make such purchases.

It is abundantly clear from the record that at the time of this purchase the appellee was engaged in examining Indian titles in the Quapaw Agency and forcing the release of all leases or claims which in his judgment were invalid and preparing under the direction of the Attorney General suits to clear the Indian titles from such clouds. He was the member of the Department of Justice detailed to the Quapaw Agency, Oklahoma, engaged in carrying out the policies of the Indian Office. This is established by Ewert's own letters (R. 149-155) and

the letter of Honorable Frank Pierce, assistant Secretary of the Interior (R. 40).

Was he then "employed in Indian Affairs," within the meaning of said Section 2078? This statute, when enacted in 1834, was Section 14 of the Act providing for "The Organization of the Department of Indian Affairs," and the first two lines of this section then read:

"And be it further enacted that no person employed in the *Indian Department* shall have any interest or concern in any trade with the Indians."

The change, substituting the phrase, "Indian Affairs" for the phrase "the Indian Department" was made after the Act of June 22, 1870, the 17th Section of which is now Section 189, Revised Statutes, and Section 271, Compiled Statutes, 1916, which reads:

"No head of a department shall employ attorneys or counsel at the expense of the United States; but when in need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same."

The restrictive phrase, "the Department of Indian Affairs," being substituted by the more general statement, "in Indian Affairs," evinces a purpose to broaden the scope and meaning of this section so as to reach persons other than those employed in the Indian Department; and probably the reason for the changing of the phrase, "Indian Department" to "Indian Affairs," was to meet just the situation which we have here. At all events, the effect in making the change, substituting the words "Indian Affairs" for "Indian Department" was

unquestionably to broaden the scope of the section as first enacted.

The act prohibits any person, whether an employe of the Department or not, from having any concern in trade with the Indians, if he is employed in Indian Affairs, and meets two conditions—one, that he is under contract of employment in Indian Affairs; and the other, that he is working in Indian Affairs in any capacity whatever.

When Ewert received his commission, which constituted his contract of hiring, he was at once, and because of same brought within the purview of the statute.

### **United States v. Douglas.**

In the case of *United States v. Douglas*, 190 Fed. 482, the defendant was a member of the Crow Creek band of Indians, and resided in the Indian Agency in South Dakota. She was sued by the United States for the penalty expressed in Section 2078, based on the fact that she had purchased cattle from Indians on the reservation, which had been furnished the Indians by the Government.

The Act of July 4, 1884, 23 Stat. 94, declares that where Indians are in possession or control of cattle, or their increase, which have been purchased by the Government, such cattle shall not be sold to any person not a *member of the tribe to which the owner of the cattle belongs*, or to any citizen of the United States, whether inter-married with the Indians or not, except with the consent in writing, of the agent of the tribe to which the owner or purchase of the cattle belongs.

The defendant belonged to the same tribe as the Indians who had sold her their cattle, and without anything further being shown, and for that reason, she had the right to buy the cattle, and the Indians had the right to sell to her.

The statute is in form a prohibition against the *Indian selling* his certain particular cattle, but the court held the prohibition was against the buyer as well. The case was made to turn on the disqualification of the defendant to make the purchase, and that disqualification was based on the fact that, "she was for many years employed by the Government as a female industrial teacher, and while so employed" purchased the cattle. It was *her* relation to the Government, and not because the cattle bought were I. D. cattle, which brought her within the purview of Section 2078.

The trial court found that she was not liable for the penalty, under Section 2078, Revised Statutes, and the Government appealed. Of course, the first proposition was whether the making of the purchase itself constituted having "any interest or concern in any trade with the Indians."

The discussion opens with this statement:

"Did the defendant, in making the purchase in question, have any interest or concern in any trade with the Indians, within the meaning of the section of the Revised Statutes quoted?"

The court discussed at length the meaning of the word "trade," then the history of the Act of June 30, 1834, 4 Stat. 738, which is the statute there and here in-



volved. Then follows a discussion of the various statutes, prohibiting and regulating dealings with the Indians, tracing the same from the Act of July 23, 1790, 1 Stat. 137, and emphasizes the course of legislation as prohibiting the *agents and servants of the Government* from purchasing or having dealings with the Indians, and using the word "agent" in its broadest sense; and finally saying, at p. 489:

"The sections of the statutes are all clear and consistent, if these various sections prohibiting government servants from buying certain articles refer to purchases whether upon Government or individual account; and, so construed, none of the prior statutes cited have any real bearing on the meaning of the word 'trade' as finally used in Section 2078 of the Revised Statutes."

The court then points out that the policies expressed in the statutes have been to prevent the persons in the employ of the Government from dealing with the Indians, and at the top of p. 490, points out the change in the statute, substituting the words "Indian Affairs," for the phrase "in the Indian Department," and saying that the defendant, as a member of the same tribe as the Indian who sold her his cattle, had the right to make the purchase, were it not for the fact that she was also an employe of the Government, and finally put the decision squarely on the proposition that the defendant as a school teacher, was in the employ of the United States and stated:

"As an Indian of the same tribe she could probably have lawfully made these purchases, were

it not for the fact that by reason of her *also being a Government employe in Indian Affairs* she was prohibited from doing so."

And again:

"There was nothing in this act to indicate a purpose on the part of Congress to authorize the Government's own agents, placed in a controlling position, to use that position, to overreach its wards."

And, again it is stated:

"The Government in its capacity as *quasi* guardian ought not to allow its *agents* to be tempted to overreach its wards. A schoolmaster placed by the government among a people under tutelage might well be expected to wield a large influence, and it is revolting that this influence should be used to subserve self-interest in barter with those who are the subject of wardship. We sustain a trust relation with the Indians imposed by the laws of the land, if not by an even higher law; and when Congress, recognizing this, forbade its agents to trade with the Indians, no strained effort should be made to construe trade in some unusual way, so as to include only sales to the Indians, and not purchases from them," etc.

The court there is dealing with the word "trade," as used in Section 2078. The Government, in the exercise of its policy toward the Indian, had employed this woman to teach school. She was held to be within the purview of this section of the statutes, and subject to this penalty.

In the Douglas case, the defendant was obligated to teach children. This was her sole contractual obligation. Under her employment she owed no duty to the

adult parent and her employment in no sense obligated her concerning the property of the Indians. Her offense was a statutory one, and did not involve the breach of any contractual or fiduciary obligation. Yet this court held her act was condemned by the statute.

In the case at bar, Ewert was employed by the Government *to protect and preserve the property* of the Indians. He dealt with the Indian for his land, the property he was commissioned to protect and preserve. He was not only, by reason of the fact that he was a Government employe engaged in the affairs of Indians, prohibited, but also because he dealt for the specific thing which he was sworn to protect—*Ewert bought the very subject-matter of his trust from the ward of the Government.*

The Government, in the exercise of its policy toward the Indian, desired to bring suits and prosecute them for invasion of the Indians' rights in Ottawa County, Oklahoma; and, it was performing that function by commissioning the defendant to go into Ottawa County, and prosecute these suits. He was employed "in Indian Affairs" just as much as was this school teacher. He was an agent of the Government, and the means by which it was performing one of its governmental functions toward the Indians, under the policy established under the Constitution and the Acts of Congress. And that the lawyer's opportunity to gain great influence over the Indians was very much greater than that of a school teacher, is apparent to all. Moreover, this defendant not only did obtain undue influence over the Indians,

but this court cannot read the letters in this record on the motion to reopen and permit the offered amendment to be made, and resist the conclusion that he obtained undue influence over the department having immediate charge of these Indians.

His plea in his answer, that he was only employed to bring suits to set aside marshals' deeds (which are not mentioned in his contract of employment), and his plea that he was not an employe of the Indian Department, only emphasize his reckless disregard of the obligations of his trust, and have no tendency to exclude his acts from the operations of this statute.

Ewert, by reason of being employed by the Attorney-General's office, to bring suits affecting the Indian lands in Ottawa County, Oklahoma, which was under the direction and personal supervision of the Interior Department, of necessity would be working with the Indian Department in bringing and prosecuting these suits, and was hence brought in such relation with the Interior Department as to enable him to wield an influence over that department in the matter of approving Indian deeds, and the matter would not have to be carried to the extent that it was carried in the case of *Sage v. Hampe*, 235 U. S. 99, to render his contract void with this Indian.

In that case, Sage claimed to own certain lands in Oklahoma, and entered into a written contract to sell and convey the lands to Hampe. The land in fact was Indian lands, held under trust patents, and Sage could not make title. Hampe sued Sage for breach of contract in the District Court of Kansas, and had judgment, and

the Supreme Court of Kansas held that he could recover on the grounds that one may make contracts to sell and convey lands of which he is not the owner, and may become liable for damages for breach of such contracts. *Hampe v. Sage*, 87 Kan. 526, 125 Pac. 53, 55. This is the law, of course.

The Supreme Court of the United States, conceding this proposition to be the law, reversed the judgment and held the contract was contrary to the policy of the Government toward these Indians, in that their allotments should not be sold except *in instances when it is to the best interests of the Indian* that it shall be done; and held that a contract between two white men, the enforcement of which might tend to bring to bear *improper influences upon the secretary*, or to induce attempts to mislead him as to *what welfare of the Indians required*, was void, because contrary to the governmental policy. It is stated, page 105:

"And more broadly it long has been recognized that contracts that obviously and directly *tend* in a marked degree to bring about results *that the law seeks to prevent*, cannot be made the ground of a successful suit."

And again:

"It appears to us that this is a contract of that class. It called for an act that could not be done at the time and it tended to lead the defendant to induce the *Indian owner* to attempt what the law, for his own good, forbade. Such contracts if upheld might be made by parties nearly connected with the Indian and strongly tend, by indirection, to induce him to deprive himself of rights that the law seeks to protect. It is true that later statutes

in force when the contract was made allowed a conveyance with the approval of the Secretary of the Interior. Act of August 15, 1894, c. 290; 28 Stat. 286, 295. Act of May 21, 1900, c. 598, Sec. 7; 31 Stat. 221, 247. The Kansas court laid these statutes on one side, *and in our view also they do not affect the case.*"

And again:

"The purpose of the law is still to protect the Indian interest and a contract that tends to bring to bear *improper influence upon the Secretary of the Interior*, and to induce attempts to mislead him as to what the welfare of the Indian requires are, as contrary to the policy of the law, as others that have been condemned by the courts."

And again, p. 106:

"The case at first sight seems like those in which a state decides to enforce or not to enforce a domestic contract notwithstanding or because of its tendency to cause a breach of the law of some other state. *Graves v. Johnson*, 179 Massachusetts, 53, 156 Massachusetts, 211. *But the policy involved here is the policy of the United States. It is not a matter that the states can regard or disregard at their will.* There can be no question that the United States can make its prohibitions binding upon others than Indians to the extent necessary effectively to carry its policy out, and therefore, as on the grounds that we have indicated the contract contravenes the policy of the law, there is no reason why the law should not be read, if necessary, as broad enough to embrace it in terms."

This, and its companion transaction, shown in this record with the Bluejackets, did actually not only tempt

the defendant to *try* to use improper influence, but did cause him to use improper influence. See his letter to the Assistant Secretary of the Interior, on p. 44, and afterwards, as late as April 5, 1913, his improper attempt to influence the secretary, still brings about an improper appeal.

In *Munson v. Railway Co.*, 103 N. Y. 58, a case extensively cited and followed by many courts, the court considered public policy, which forbade a trustee from being concerned in any trade with his beneficiaries, and answering the same character of contention, at page 74, stated :

"It does not stop to inquire whether the contract or transaction was fair or unfair. It stops the inquiry when the relation is disclosed, and sets aside the transaction or refuses to enforce it, at the instance of the party whom the fiduciary undertook to represent, without undertaking to deal with the question of abstract justice in the particular case. It prevents frauds by making them, as far as may be, impossible, knowing that real motives often elude the most searching inquiry, and it leaves neither to judge or jury the right to determine upon a consideration of its advantages or disadvantages, whether a contract made under such circumstances shall stand or fall. It can make no difference in the application of the rule in this case that Munson's associates were not themselves disabled from contracting with the corporation, or that Munson was only one of ten directors who voted in favor of the contract."

And does not the public policy of the government, which the court expressed by the terms "*quasi guardian*"

and "wards of the nation," and such like language, extend to and prohibit the agents of the government from dealing with Indians, upon the same principle that the rule of public policy which forbids a trustee from purchasing his ward's property, prohibits the agent of such trustee from so purchasing? This fact is in harmony with the view expressed in *United States v. Douglas*, *supra*.

In *Crocker v. United States*, 240 U. S. 80, 36 Supreme Court Reporter, 245, the court declared a contract void, because of its tendency to induce improper influences over the heads of departments and cited *Sage-Hampe* and other cases following this statement:

" 'Considerations as to the most efficient and economical mode of meeting the public wants should alone control, in this respect, the action of every department of the government. No other consideration can lawfully enter into the transaction, so far as the government is concerned. Such is the rule of public policy; and whatever tends to introduce other elements into the transaction is against public policy. That agreements like the one under consideration have this tendency is manifest. They tend to introduce personal solicitation and personal influence as elements in the procurement of contracts; and thus directly lead to inefficiency in the public service, and to unnecessary expenditures of the public funds. \* \* \* Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means of the accomplishment of the end desired. *The law meets the suggestion of evil and strikes down the contract from its inception.* There is no real difference in principle between agreements to procure favors from legislative bodies, and agreements to procure favors



in the shape of contracts from the heads of departments. The introduction of improper elements to control the action of both is the direct and inevitable result of all such arrangements.' Further recognition of this rule is found in (other cases omitted, and) *Sage v. Hampe*, 235 U. S. 99."

Consideration of the welfare of the Indian and the effects of the sale of his allotted lands, to be approved by the Secretary of the Interior. No other consideration can lawfully enter into the transaction, is the rule of public policy of the United States. That other considerations did enter into this transaction is made plain by the false affidavit of Franklin Smith, and the statement of Ewert in his letters to the department, and his personal appeals to the officers and agents of the Department of the Interior.

### **United States v. Hutto.**

This case is reported in Advance Opinions of Supreme Court of July 1, 1921, No. 16 at page 671. In this case this court recognizes the breadth and scope of Section 2078 and extends its provisions far beyond what we claim here. In the Hutto case this court held that the official Indian farmer was by Section 2078 prohibited from dealing with the Indians concerning non-restricted property such as automobiles etc., and said:

"It manifestly was and is designed to insure integrity of conduct on the part of all persons employed in Indian affairs, and an impartial attitude towards the Indians, by excluding from persons so employed all motives of personal gain,

so that the duty of the United States as trustee for these dependent peoples, recognized wards of the Government, might be performed with a single regard for their interests appropriate to the fiduciary relation. The purpose was to protect the Indians from their own improvidence; relieve them from temptations due to possible cupidity on the part of persons coming into contact with them as representatives of the United States; and thus maintain the honor and credit of the United States, rather than to subserve its pecuniary interest."

And further considered the violation of the prohibition contained in Section 2078 as "an offense against the United States," saying:

"And we deem it clear that a conspiracy to commit any offense which, by Act of Congress, is prohibited in the interests of the public policy of the United States, although not of itself made punishable by criminal prosecution, but only by suit for penalty, is a conspiracy to commit an 'offense against the United States' within the meaning of Section 37, Criminal Code, and, provided there be the necessary overt act or acts, is punishable under the terms of that section."

It would seem that this last expression of this court is conclusive. Here the Indian farmer was engaged in a business of dealing with other Indians for property non-restricted and not within his care as an employee and this court condemns the act as an offense against the United States as violative of its public policy. While in the case at bar defendant contends that he should be permitted to retain property secured by him through a dummy although his trust as an official in-

cluded the care for and protection of this particular property. Why did Ewert purchase in the name of Smith? The reason is plain: He knew it was a violation of the law, contrary to public policy and afterwards in his correspondence (R. 44) with the Secretary of the Interior recognized it as being indiscreet. *United States v. Hutto, supra*, says it is an offense against the United States.

The general rule of law is that an act done in contravention of a statutory prohibition is void, and not merely voidable, and hence confers no right on the wrongdoer; and the fact that a statute prescribes a penalty for the doing of a prohibited act does not confine the scope of the statute to the prohibition nor make the prohibited act valid as against parties other than the sovereign.

*Hanauer v. Doane*, 12 Wall, 343.

*Cont'l Wall Paper Co. v. Louis Voight & Sons Co.*, 212 U. S. 227, 262.

*Prosser v. Finn*, 208 U. S. 67, 74.

*Waskey v. Hammer*, 223 U. S. 85, 94.

*State v. Wilson*, 73 Kan. 343.

*Miller v. Ahrens*, 163 Fed. 870, 875.

*Bowling v. United States*, 191 Fed. 19, 23.

*General Film Co. v. Samplimer*, 232 Fed. 95, 99.

*Sheppey v. Stevens*, 185 Fed. 147, 157.

*Trist v. Child*, 21 Wall. 441, 448.

*Levy v. Kansas City, Kan.*, 168 Fed. 524, 525.

*North Carolina v. Vanderford*, 35 Fed. 282, 283.

*Sage v. Hampe*, 235 U. S. 99.

*Vickroy v. Pratt*, 7 Kan. 239, reprint 153.

The purchase of this land by Ewert at the time he was a special assistant to the attorney-general of the United States is utterly void, not only as between himself and the United States, but also as between himself and the Indian, or any person, who had acquired title from the Indian, even after the transaction.

The effect of the statute Section 2078 is not limited to subjecting the defendant to the penalty of five thousand dollars therein prescribed by the Act, but the deed which he obtained is utterly void.

In the last paragraph of the opinion of the case of *Waskey v. Hammer*, 223 U. S. 85, 94, it is stated:

"The general rule of law is that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer, but this rule is subject to the qualification that when, upon a survey of the statute, its subject matter and the mischief sought to be prevented, it appears that the Legislature intended otherwise, effect must be given to that intention. *Miller v. Ammon*, 145 U. S. 421, 426; *Burck v. Taylor*, 152 U. S. 634, 649; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 548. Here we think the general rule applies. The acts described in Sec. 452 are expressly prohibited under penalty of dismissal. There is in its language nothing indicating that its scope is to be confined to the exaction of that penalty, *Prosser v. Finn*, *supra*, or that acts done in violation of it are to be valid against all but the Government. Nor is there anything in its subject-matter or the mischief sought to be prevented which militates against the application of the general rule. On the contrary, it is reasonably inferable, from the language of the section and the situation with which it deals, that it is intend-

ed that violations of it shall be attended by the ordinary consequences of unlawful acts. We therefore are of the opinion that the readjusted location was void." See *Miller v. Ammon*, 145 U. S. 421.

Appellee will with great particularity argue that he had induced the Interior Department to approve his deeds. He also testified on the witness stand that the attorney general justified his conduct; and he contends that the Interior Department, by its agents, had acquitted him of any wrong, and for that reason, plaintiff could not recover.

A similar contention was made in *Prosser v. Finn*, 208 U. S. 67, where an agent of the Land Department made an entry while he was such agent. Being in possession, he ceased to be an agent, and then made another entry. One of his contentions was that the Land Commissioner held that he was a special agent, and that the statutes prohibiting agents and employees of the Land Office from making entries would not apply to him. The contention was expressly overruled, and the court said (p. 74):

"In the eyes of the law his case is not advanced by the fact that he acted in conformity with the opinion of the Commissioner of the General Land Office, who states, in a letter, that Sec. 452, Rev. Stat., did not apply to special agents. That view, so far from being approved, was reversed, upon the formal hearing, by the Secretary of the Interior. Besides, an erroneous interpretation of the statute by the commissioner would not change the statute or confer any legal right upon

*Prosser in opposition to the express prohibition against his purchasing or becoming interested in the purchasing of public lands while he was an employee in the General Land Office. The law, as we now recognize it to be, was the law when the plaintiff entered the lands in question, and, being at the time an employee in the land office, he could not acquire an interest in the lands that would prevent the Government, by its proper officer or department, from concealing his entry and treating the lands as public lands which could be patented to others. It may be well to add that the plaintiff's continuing in possession after he ceased to be special agent was not equivalent to a new entry."*

In *Sappliner v. Motion Picture Patent Co.*, 255 Fed. 242, Second Circuit, p. 251, it is stated:

"The question whether an agreement is void on the ground that it is contrary to public policy is to be determined by its general tendency. If that is opposed to the interest of the public the agreement is void, even though in the particular case the intent of the parties may have been good and no injury to the public may have resulted."

And again on page 252:

"It matters not that any particular contract is free from taint of actual fraud, oppression or corruption. The law looks to the general tendency of such contracts."

And again the court said:

"The law looks to the general tendency of such agreements, and it closes the door to temptation by refusing them recognition in any of the courts of the country."

In *United States v. Havenor*, 209 Fed. 988, a contention, exactly analogous to this defendant's contention, was made; and in that case the defendant was operating under a special appointment as here, and as to such contention, the court said, p. 990:

"True, deputy mineral surveyors exercise no control over, or discretion in, the matter of the disposition of the Pocatello townsite, but Section 452 does not operate merely to disqualify employees of the land office from purchasing lands to which their duties directly relate. In the wisdom of Congress, it was provided that no employe of the Land Office, wherever he might be employed, or whatever might be his duties, should directly or indirectly become the purchaser of or interested in the purchase of, any public land, wherever the same might be situated. A register or receiver of a United States land office in Idaho has nothing to do with the disposition of public land in California, and yet, under the general prohibition of the section, he is disqualified from purchasing public lands in California. So here, while a deputy mineral surveyor may have nothing to do with the disposition of Pocatello townsite lots, he falls within the sweeping prohibition of the section, and is thereby disqualified from becoming a purchaser. It is possible that the purpose of the law might be accomplished by a more restricted provision, but that is a consideration addressed to the Legislature rather than the judicial department of the Government."

*Waskey v. Hammer*, 223 U. S. 85, 170 Fed. 31, 35.

"We have thus seen that the deeds assailed in this case were unauthorized and void. They were executed in violation of valid limitations im-

posed by Congress upon the division and alienation of the lands in question."

*United States v. Aaron*, 183 Fed. 352.

"Thus the law stood until the Act of 1902, *supra*, providing for the sale of inherited allotments by the heirs, subject to the approval of the Secretary of the Interior. The heirs in this case could have availed themselves of this statute, and by proper probate court proceedings in case of minors, and securing the secretary's approval, have legally disposed of the land. If the act did not authorize the sale of the land as attempted in this case, then the fact that it was pursuant to a decree or order of court, lends no validity to the transaction. *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525."

*United States v. Bell*, 182 Fed. 166.

"For these reasons we have no hesitation in holding that the leases secured by the real estate company were executed in open violation of the laws of the United States, and are therefore utterly null and void."

*Beck v. Flournoy Livestock & Real Estate Co.*, 65 Fed. 36.

In *Telephone & Telegraph Co. v. Evansville*, 127 Fed. 187, 196 & 197, it is stated:

"Complainant's counsel confuse the words 'void' and 'voidable.' Such confusion has frequently occurred in statutes and decisions of courts, but in the cases cited in the original opinion herein the Supreme Court of the United States used the word 'void' in its strict and proper sense; and in the case of *Central Transportation Co.*, *supra*, in the paragraph quoted in the original opinion, the court held the contract in that case to be 'not voidable only, but wholly void, and of



no legal effect.' 'Contracts to do acts that are illegal, criminal or *contrary to public policy* \* \* \* *are absolutely void.*'"

"The law cannot recognize as valid any undertaking to do what fundamental doctrine or legal rule directly forbids. Nor can it give effect to any agreement the making whereof was an act violating law."

*Gibbs v. Balliner Gas Co.*, 130 U. S. 396, 410.

In *Norbeck & Nicholson Co. v. State*, 32 S. D. 28, 33, 142 N. W. 847, 850, it is stated:

"But in no one of these cases, nor indeed in any case which has come under our observation, have the courts entertained any contract, or any rights growing out of a contract, where either the consideration was based, or the contract was against the express prohibition of the law. This, then, is the undoubted rule that when a contract is expressly prohibited by law, no court of justice will entertain an action upon it, or upon any asserted rights growing out of it. And the reason is apparent; for to permit this would be for the law to aid in its own undoing."

## II.

**The original transaction being void, the lands remained restricted, and no statute of limitation or doctrine of laches is applicable thereto.**

The Circuit Court of Appeals in its opinion filed in *Bluejacket v. Ewert*, *supra*, held that Ewert was disqualified from purchasing and that his deed was void. But further held that the adult grantors were barred in equity because of their laches or delay in bringing suit.

The court in its filed opinion says:

"The plaintiffs executed this deed in April, 1909, and this suit to cancel the deed was begun in June, 1916. The time within which the adult grantors could have brought such a suit under the statute of limitations applicable to suits or cases by the laws of Oklahoma had then expired."

We respectfully urge that the court is in error in making this statement. This no doubt results from a misapprehension of the case of *Campbell v. Dick*, decided by the Supreme Court of Oklahoma. We contend that the statute of limitation (if applicable at all) is fifteen years. Counsel for appellee Ewert cited the case of *Campbell v. Dick*, 157 Pac. 1062 (Okla.) as authority for his contention that the limitation was two years. He failed to call to the attention of the court that *Campbell v. Dick*, on rehearing (176 Pac. 520) was affirmed, holding that the limitation period in that case was fifteen years and not two years, as the court had originally held in 157 Pac. 1062.

The deed being a nullity, the adult grantors should have the same relief unless by their conduct they are precluded. If precluded by their conduct (delay or laches) then Ewert has obtained title to their lands, although restricted, not in accordance with law, but in open defiance of the law, and in a court of equity.

The courts now uniformly hold that title to Indian restricted lands can be obtained in no way or manner except as is authorized by Act of Congress, and that "no scheme, however ingenious," can be used to divest the

Indian of his title except in such method provided by law.

The Supreme Court of Oklahoma has had similar questions before it, and the question is now settled in Oklahoma that there is but one way to obtain title to Indian restricted lands, and that is by *lawful conveyance* in the method fixed by Congress. In *Bell v. Fitzpatrick*, 157 Pac. 334, 53 Okla. 574, the defendant claimed title by judgment entered in his favor in the District Court, although the land could only be sold through the Probate Court. The court said:

"The effect which counsel seek to give the purported orders of dismissal is to divest the title of plaintiff in and to the lands in question and reinvest it in defendant. While they say that it amounts to a judgment quieting title, this is another way of saying that the void deed is given validity and effectiveness in this indirect way, when such deed is an absolute nullity. Defendant had no title which could be quieted, and the District Court had no jurisdiction to effect a transfer of the plaintiff's title to her restricted lands to defendant in such manner. Neither can defendant by any device or scheme acquire that title in violation of the public policy of the United States, as expressed in the various Acts of Congress affecting matters of this character."

In *Brink v. Canfield et al.*, decided by the Supreme Court of Oklahoma on June 19, 1919, and now pending on rehearing, the court say:

"The inquiry is readily answered by the decisions of this court in *Jefferson v. Winkler*, 26 Okla. 653, 110 Pac. 755; *Bell v. Fitzpatrick*, .... Okla. ...., 157 Pac. 334; and by other cases, and

by the Circuit Court of Appeals in *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525; and *Bowling v. United States*, 191 Fed. 19, 111 C. C. A. 561, the latter case being affirmed on appeal by the Supreme Court of the United States in 233 U. S. 528, 58 L. Ed. 1080. At the time Jack's suit was instituted, *there was but one way in which he could alienate his title to the lands* which he had inherited, and that was by a deed of conveyance, approved by the court having jurisdiction of the settlement of the estate of the deceased allottee (35 Stat. at L. 312, c. 199). While the restrictions had been removed from the lands in the sense that Jack had the power of alienation, it could only be consummated and made effectual when approved as pointed out in the foregoing Act of Congress. Without the making of a deed and its approval, no judgment could be rendered, regardless of the character of the suit or the issues joined, whereby Jack's title could be divested, he being a full-blood Creek Indian, and the lands being lands allotted to his kinsman, through whom, upon the death of succeeding heirs, his title was derived. Nor could the judgment be given effect in a subsequent legal proceeding, *either as an estoppel* or as constituting a former adjudication of his title. In other words, insofar as the title to such lands was concerned, the judgment was a nullity, because of a want of power in the court to make it. Any other view would mean the circumvention of the statute prescribing the manner in which such lands may be alienated, *and make nugatory the Acts of Congress prescribing the manner and terms of conveyances of allotted lands inherited by full-blood Indians.*"

To like effect see:

*Brown v. Anderson*, 160 Pac. 724 (Okla.).  
*Jefferson v. Gallagher*, 150 Pac. 1071 (Okla.).  
*Crow v. Hartridge*, 175 Pac. 115 (Okla.).

In *Sheldon v. Donohoe*, 19 Pac. 901 (Kan.), the court said:

"Donohoe has no other title nor any better right to convey to Sheldon than he had when the void deed was made. Sheldon was incapable of taking title to the land then, and has been ever since that time. By the paramount Federal law he was prohibited from taking the title, and therefore he cannot indirectly *build up one by adverse possession, estoppel, or any statute of limitations.*"

This Sheldon case was cited with approval in *Goodrum v. Buffalo*, 162 Fed. 827, and the court added:

"It should be understood, once for all, that no scheme or device, however ingenious or plausible, concocted by any person, can avail to divest the Indians of the title to their allotted lands within the period of limitation prescribed by Congress."

In *Wrigley v. McCoy*, 175 Pac. 259 (Okla.), at page 261, the court say:

"In each of the treaties made with Indian tribes, the United States has reversed the right of control over the lands granted, and it has been the universal holding of the courts that such lands can be alienated only in the manner prescribed by the laws of the United States, and in accordance with treaty stipulations with the Indian tribes."

Again, page 262:

"It cannot be contended logically that the mere occupation and use of Indian lands which are non-alienable, there being no conveyance to the occupant or his grantors, would give the occupant the right to invoke the statute of limitation. Can it then be said that such occupation and use would be strengthened

by a deed which the grantors, under the law, were unable to make and which was without any force or effect? Can the United States thus be deprived of its guardianship and interest in the lands? We do not think that alienation can be accomplished by indirection, when such cannot be done directly.

In *Gibson v. Chouteau*, 13 Wall. (80 U. S.) 92, 20 L. Ed. 534, the Supreme Court of the United States says:

'The occupation of lands derived from the United States, before the issue of their patent, for the period prescribed by the statutes of limitation of a state for the commencement of actions for the recovery of real property, is not a bar to an action of ejectment for the possession of such lands, founded upon the legal title subsequently conveyed by the patent.'

Quoting from the syllabus of *McGannon v. Straightlege*, 32 Kan. 524, 4 Pac. 1042:

'Under the treaty between the United States and the confederated tribes of Kaskaskias, Peoria, Piankeshaws and Weas, of May 30, 1854 (10 U. S. Stat. at Large, 1082), an Indian was allotted a certain piece of land, and before the patent was issued he executed a deed therefor to the defendant's grantor. Such deed has never been approved by the Secretary of the Interior. The defendant and his grantor have been in quiet and peaceable possession of the land ever since, and for more than 15 years prior to the commencement of this action. After the patent was issued to said Indian, and after his death, and on June 23, 1882, his sole surviving heir executed a deed of conveyance for the land to the plaintiff; and on October 10, 1882, such deed was approved by the Secretary of the Interior, and on April 25, 1883, the plaintiff commenced this action against the defendant to recover the land. Held, that neither this action nor the plaintiff's title to the land is barred by any statute of limitation.'

The court in the body of the last-quoted opinion, used the following language:

'The title being an Indian title—or, in other words—the title being vested in the United States and an Indian—no statute of limitations could operate against such title.' "

"This court, in *Miller v. Fryer*, 35 Okla. 145, 128 Pac. 713, says:

'It is well settled that there can be no adverse possession against the Federal Government which can form the basis of title by estoppel or under the statutes of limitation; and it has been held that the same rule applies where the lands involved are lands that have been allotted to Indians, with restrictions upon the alienation of title thereto by the Indians, so long as such restrictions upon alienation exist.' "

The opinion in the Bluejacket Case is, in our humble judgment, inconsistent with the same court's opinion in *Goodrum v. Buffalo*, 162 Fed. 817, wherein the court, at page 826, said:

"If the Indian could create *no estoppel* against himself or herself by deed of conveyance, how could he or she create an estoppel by consenting to a judgment as the basis of an estoppel effectual to alienate the land, in direct contravention of the Acts of Congress? The allottees of these lands, during the probationary period of twenty-five years, were under as much disability to alienate them by contract or deed or voluntary submission to a court as if they had been under the disability of coverture or minority. The disability of the minor to do these things is imposed by the common law. The disability of these Indians is imposed by statute. It must therefore logically and necessarily follow that the record of a judgment of a court disclosing on their face that the disqualified Indian was entering into

an agreement for submission of the question of his rights to dispose of these lands was in no wise different from such a proceeding participated in by a minor infant."

This expression of the court in the Goodrum case is made concerning a Quapaw Indian, and the opinion ends with this forceful statement:

"It should be understood, once for all, that no scheme or device, however ingenious or plausible, concocted by any person, can avail to divest the Indians of their allotted lands within the period of limitation prescribed by Congress."

The case of *Felix v. Patrick*, 145 U. S. 317, cited in the opinion, is not, as we view it, supportive of, or even analogous to, the case at bar; because (1) there was no restriction against alienation of the land located; the Indian had a right to issue the power of attorney for location and give deed for the land; (2) that F located the land for her as her representative and an implied trust resulted, which did not prevent an adverse holding; (3) that the case is bottomed on fraud; (4) the time was twenty-eight years, and in the meantime the land had passed into the hands of innocent purchasers, had been platted into town lots, streets and alleys opened, becoming immensely valuable, and the loss would fall on innocent persons not connected with the fraud. At all times the Indian could have disposed of said land without any restriction or supervision of the Federal Government.

The case at bar is different, as is shown by the holdings of the Oklahoma Supreme Court. The grantors



were not free to dispose of this land as a white person, and it could be taken from them in only one way—the method prescribed by Congress. No innocent purchaser is involved here. Ewert himself is charged with knowledge of the law, and this record abounds in testimony of his activity in securing the approval of this deed by his influence with high administrative officials of the government.

The court, in *Felix v. Patrick*, page 326, said:

“The device of a blank power of attorney and quit claim deed was doubtless resorted to for the purpose of evading the provision of the Act of Congress that no transfer or conveyance of the scrip issued under such act should be valid. This rendered it necessary that the scrip should be located in the name and for the benefit of the person to whom it was issued, but from the moment the scrip was located and the title to the land vested in Sophia Felix, *it became subject to her disposition precisely as any other land would be.* In order, therefore, for the purchaser of this scrip from Sophia Felix to make the same available, *it became necessary to secure a power of attorney or a deed of the land,* and as the scrip had not then been located, and the person who should locate it was unknown, the name of the grantee and the description of the land must necessarily be left blank.”

Again, page 329:

“The most important question in this case, however, the question upon which its result must ultimately depend, is that of laches. While, upon the facts stated, Patrick took these lands as trustee for Sophia Felix, he did not take them under an express trust to hold them for her benefit (in which

case lapse of time would be immaterial), but under an implied or constructive trust—a trust created by operation of law, and arising from the illegal practices resorted to in obtaining the power of attorney and deed.”

Again, page 333:

“The real question is, whether equity demands that a party who, 28 years ago, was unlawfully deprived of a certificate of muniment of title of the value of \$150, shall now be put in the possession of property admitted to be worth over a million. The disproportion is so great that the conscience is startled, and the inquiry is at once suggested, whether it can be possible that the defendant has been guilty of fraud so gross as to involve consequences so disastrous. In a court of equity at least, the punishment should not be disproportionate to the offense, and the very magnitude of the consequences in this case demands of us that we should consider carefully the nature of the wrong done by the defendant in acquiring the title to these lands. *He is not charged in the bill with having been a party to the means employed in obtaining the scrip from Sophia Felix, or with being in collusion with the unknown person who procured it from her.*”

Also, *Schrumpscher v. Stockton*, 183 U. S. 290, cited in the opinion, is not analogous; because (1) although the deed of Stockton, defendant, was void, the statute of limitations had more than run since the disability of the Indian and the inalienability of the land had been removed by the treaty of 1868; (2) the suit was brought more than 20 years after the land *was alienable*.

A few quotations from the opinion makes this case clearly distinguishable.

Referring to treaty of 1868 (page 295) :

"This article makes the following distinct provisions: I. It removes all restrictions upon the sales of land patented to incompetent Wyandottes, which should thereafter be made. \* \* \*

"But although the treaty of 1855 and the patent to Rodgers had expressly provided that there should be no alienation by the grantee or his heirs, the treaty of 1868, which took effect after his death, removed all restrictions upon alienations which should thereafter be made, either by the incompetent grantee, Rodgers, or his heirs, who thereafter held an alienable title, and were bound to assert such title within the time specified by the statute of limitations, *although no title could be gained by adverse possession so long as the land continued to be inalienable by Rodgers and his heirs. McGannon v. Straightlege*, 32 Kan. 524; *Sheldon v. Donohoe*, 40 Kan. 346."

Again, page 296:

"Their *disability* terminated with the ratification of the treaty of 1868. The heirs *might then* have executed a valid deed of the land, and possessing, as they did, an unincumbered title in fee simple, they were chargeable with the same diligence in **beginning an action for their recovery** as other persons having title to lands; in other words, they were bound to assert their claims within the period limited by law. This they did not do under any view of the statute (whether the limitation be three or fifteen years), since it began to run at the date of the treaty, 1868, and the action was not brought until 1894, a period of over twenty years.

Again, page 297:

"As Article XV *removed all restrictions upon the sale of lands* by incompetents, if the heirs of

Carey Rodgers took the position that the article did not apply to them, they assumed the burden of proving that fact."

Here it is admitted Ewert knew he was dealing with a restricted Indian; the Indian is restricted today, and no provision has been made as in the treaty of 1868, in the Stockton case.

Again, page 298:

"There was no evidence in this case, except from the patent, that the grantees even knew that Rodgers was an Indian, as was the case in *Taylor v. Brown*, 5 Dakota, 344, much less that he belonged to the incompetent class, and they apparently received the deed, as many people do, without a careful examination of the grantor's title."

This again distinguishes the case. The vendee did not know his grantor was an Indian or in any way incapacitated from selling. The case at bar discloses that Ewert knew with whom he was dealing, the limitations of the Indian's powers, and much influence was necessary to obtain the approval of the deed. This use of influence alone should condemn the appellee's case. The Schrimpscher-Stockton case is bottomed on the delay of action by the Indians for more than 20 years *after they could have executed a valid deed*. That time has not come with the Indians here.

Laches is not imputable or chargeable to a plaintiff because of mere delay or lapse of time, but because such delay would inequitably affect the defendant in asserting his claim.

In *Northern Pacific Railway Company v. Boyd*, 228 U. S. 482, at page 509, the doctrine of laches is thus defined:

"But the doctrine of estoppel by laches is not one which can be measured out in days and months, as though it were a statute of limitations. For what might be inexcusable delay in one case would not be inconsistent with diligence in another and unless the non-action of the complainant operated to damage the defendant or to induce it to change its position, there is no necessary estoppel arising from the mere lapse of time. *Townsend v. Vanderworker*, 160 U. S. 171, 186."

In *Halstead v. Grinnan*, 152 U. S. 412, 417, 14 Sup Ct. 641, 643 (38 L. Ed. 495), it is said:

"It (laches) is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them.

As said in *Gallagher v. Cadwell*, 145 U. S. 368, 372, 12 Sup Ct. 873, 874 (36 L. Ed. 738), the cases in which the defense of laches has been considered—

"proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless, or have been abandoned; and that because of the change in conditions or relations during this period of delay it would be an injustice to the latter to permit him to now assert them."

As said in *Penn Mutual Life Ins. Co. v. Austin*, 168 U. S. 685, 698, 18 Sup. St. 223, 228 (42 L. Ed. 626) :

"The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice or that the intervening rights of third parties may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect."

As said in *O'Brien v. Wheelock*, 148 U. S. 450, 493, 22 Sup Ct. 354, 371 (46 L. Ed. 636) :

"Its application depends on the circumstances of the particular case. It is not a mere matter of lapse of time, but of change of situation during the neglectful repose, rendering it inequitable to afford relief."

Under the holding of the Circuit Court of Appeals the appellee is disqualified from purchasing, his deed is void, but by the application of the doctrine of laches, the Indian is divested of his title and Ewert becomes the owner of it in direct violation of Acts of Congress and the public policy of the land.

This is contrary to the adjudicated opinions of the courts.

In an opinion of the Supreme Court of Oklahoma not yet officially reported, entitled *Patterson et al. v.*

*Carter et al.* and handed down September 13, 1921, it is said:

"In the first place, it is well settled that an Indian who is under the guardianship of the United States cannot be divested of his restricted lands, whether acquired by allotment or by inheritance, in any manner except that provided for by some act of Congress. In other words, if, in the case at bar, the inherited surplus as we have held, is still restricted, the Indian owner cannot be divested of his title therein except in the manner provided by act of Congress, and then only in the manner provided by law. *Goodrum v. Buffalo*, 162 Fed. 817, 89 C. C. A. 525; *Bell v. Fitzpatrick*, 52 Okla. 574, 157 Pac. 336. It must not be forgotten that these restricted Indians do not become *sui juris* upon reaching their majority. As a dependent people these Indians are still wards of the federal government against which the statute of limitations does not run. In these circumstances it would be futile to hold that the statute of limitations commenced to run against the Indian himself upon reaching his majority, although it did not run against his general guardian, the United States. It is well settled that there can be no adverse possession against the federal government which can form a basis of title by estoppel, or under the statute of limitation, and it has been held that the same rule applies where the lands involved are lands that have been allotted to Indians with restrictions upon the alienation of title thereto by the Indians, so long as such restrictions upon alienation exist. *Miller v. Fryer*, 35 Okla. 145, 128 Pac. 713. Other cases more or less in point are *Wrigley v. McCoy*, 73 Okla. 175 Pac. 259; *McGannon v. Straightlege*, 32 Kan. 524, 4 Pac. 1042; *Sheldon v. Donohoe*, 40 Kan. 346, 19 Pac. 901."

Also see :

166 Pac. 1101 (Okla.).

171 Pac. 331 (Okla.).

169 Pac. 884 (Okla.).

148 Pac. 846 (Okla.).

*Barbee v. Hood*, 228 Fed. 658.

### III.

**The original transaction being void and unlawful, the compromise stipulation or ratification is likewise void and ineffective.**

At the same time appellee secured the stipulation for dismissal he also as part of the same transaction secured a deed from Redeagle. See testimony of witness Hallam, Record p. 303 and the deed as exhibit 6 Record page 348-349. Appellee recorded this deed and submitted same to the Department of the Interior for its approval but the said Department never approved same.

In *Pope Mfg. C. v. Gormully*, 144 U. S. 224, 234, it is said,

“ Suppose, then, an agreement made by the maker of a note that he would not set up the defense of usury. Would an action lie for breach of that agreement, in case the party should make the defense in disregard of it? It appears not, and the reason is, that the right to make the defense is not only a private right to the individual, but it is founded on public policy which is promoted by his making the defense, and contravened by his refusal to make it. \* \* \* With regard to all such matters of public policy, it would seem that no man can bind himself by estoppel not to assert a right



which the law gives him on reasons of public policy.' "

And:

"So in *Stoutenburg v. Lybrand*, 13 Ohio St. 228, it was held that a contract which provides that a defendant in a proceeding for divorce shall make no defense thereto, is against public policy, and therefore void. 'The tendency of such agreements,' said the court, 'is to mislead the court in the administration of justice, and injuriously affect public interests.' "

And this policy can no more be waived by a subsequent agreement of compromise than in the first instance in the contract of sale.

In 5 R. C. L. 884, Sec. 8, it is stated:

"Any contract executed in consideration of a previous illegal one, or in compromise of differences growing out of it, is, generally speaking, like that whereon it rests, illegal and incapable of being enforced. Hence it is that the compromise of a claim, even if in suit, does not constitute consideration for a new promise if the original note is based on an illegal contract, such, for instance, as a gambling debt."

In Pomeroy's Equity Jurisprudence," Vol 2, Sec. 964, is this statement:

"Wherever a conformation would itself be subject to the same objections and disabilities as the original act, a transaction cannot be confirmed and made binding; for confirmation assumes some positive, distinct action or language, which, taken together with the original transaction, amounts to a valid and binding agreement. In general, contracts which are void from illegality cannot be ratified and

confirmed; contracts which are merely voidable because contrary to good conscience or equity may be ratified, and thus established."

And in note to said section is this statement:

"Thus contracts illegal because opposed to statute, or to public policy, or to good morals, cannot be ratified, because the ratification itself would be equally opposed to statute, good morals, or public policy. Contracts obtained by actual fraud, by undue influence, by breach of fiduciary duty, and the like, may be confirmed, because *the parties alone are concerned*; the state or society has no special interest, as it has in those opposed to statute, public policy, or good morals."

In 9 Cyc. 562, it is stated:

"If a connection between the original illegal transaction and a new promise can be traced, no matter how many and in how many different forms it may be renewed, it cannot form the basis of a recovery. Repeating a void promise cannot give it validity. So, if any agreement in furtherance of, or for the purpose of carrying into effect any of the unexecuted provisions of the previous illegal agreement is likewise illegal and void."

In 8 Cyc. 530, it is stated:

"A contract of compromise may be set aside where it is against public policy, is an immoral character, *or is in settlement of an illegal transaction.*"

In *Union Collection Co. v. Buckman*, 150 Cal. 159, 88 Pac. 708, 710, it is stated:

"But whatever may be the law as to cases involving no question of illegality, it is very clear that the rule contended for by plaintiff as to the effect

of a compromise of an action can have no application where the claim involved therein was wholly based upon an unlawful, as distinguished from a merely insufficient consideration. There is no better settled rule of law than the one to the effect that the courts will not entertain any action in affirmance of an illegal contract. As was said in *Hill v. Kidd*, 43 Cal. 615: 'It is equally well settled that no action in affirmance of an illegal contract can be maintained.' "

And at p. 711, it is stated:

"It would seem to necessarily be the case under this well-settled rule that no action of the parties or their assignees can so validate an illegal contract, as to justify a court in enforcing it, where its illegality appears. An attempted compromise of a claim based on such a contract, whether before or after institution of action thereon, would be simply an act of the parties, looking to the complete or partial ratification of the illegal contract, and which could in no way affect the power of the court to refuse to allow itself to be used as the instrument for its enforcement. We have been unable to find any case holding that a compromise of a claim based on such a contract is supported by a legal consideration, and will be enforced by the courts, and it appears to us that any such holding would be in defiance of the well-settled rule under discussion, and contrary to every consideration of public policy."

In *Boutelle v. McLendy*, 19 N. H. 146, 49 Am. Dec. 152, 153, there was a foreclosure of a mortgage contrary to the expressed provisions of the statute, and the court stated:

"*The sale was illegal*; and it is well settled that such contracts shall receive no judicial sanction; that the law will recognize no validity in favor of a

wrong-doer in an act which it prohibits and punishes. To permit its subsequent ratification, or to consider it the sufficient and legal basis of a subsequent promise, would be a manifest inconsistency. It would be to annul the rule and enable the parties, by an easy expedient, to evade laws based upon considerations of public policy."

And, also in the same case, it is further stated:

"These cases of illegal contracts are plainly distinguishable from those where a moral obligation has been recognized as the sufficient consideration for a subsequent promise; such as that of a debt barred by the statute of limitations, or one contracted during minority."

In *Lindt v. Uilein*, 79 N. W. 73, 75, it is stated:

"While Anna Pralor might have acquiesced in this conveyance, no acts of hers could ever ratify it so as to give it legal effect. It was not avoidable, but under this statute utterly null and void; therefore the matters set up in the paragraphs of the answer that were stricken out present no defense to the action, and there was no error in sustaining the motion."

In *United States v. Grossmayer*, 9 Wall. 72, 75, it is stated:

"It is argued that the purchase by Einstein was ratified by Grossmayer, and that being so the case is relieved of difficulty; but this is a mistaken view of the principle of ratification, *for a transaction originally unlawful cannot be made any better by being ratified.*"

In *Brown v. First National Bank of Columbus*, . . . .  
Ind. . . . , 24 L. R. A. 206, 211, it is said:

"The contention of counsel that the appellee, having received the benefit of the contract, is estopped to defend against it on the principle that a corporation which has such benefit is estopped to assert that it had no power to contract, is unsound, as applied to the case at bar. The rule suggested applies to cases where private rights alone are concerned, while in contracts void as against public policy the public is interested. The public concern cannot be made a matter of private bargain. A number of maxims apply to interdict the enforcement of such a contract, and many decisions hold that the receipt of benefits and retention of property under such a contract give no right of recovery."

In *Armstrong v. Toler*, 11 Wheat. 258, it is stated:

"And if the contract be, in fact, only connected with the illegal transaction, and growing immediately out of it, though it be in fact a new contract, it is equally tainted by it."

In *Wilcox v. Edwards*, 162 Cal. 455, 123 Pac. 276, Ann. Cases, 1913C p. 1394, it is stated:

"The established rule is that if a contract is void by the law in force at the time it is made, the subsequent repeal of the law will not validate such contract." Citing a large number of cases, and stating:

"The general rule that the repeal of a law does not validate contracts declared void thereby, is recognized and admitted in all the above mentioned cases, and the usury law is said to be an exception."

If the legislature has no capacity to validate contracts made contrary to public policy, for how much greater reason are the parties themselves precluded from validating such contracts by their own acts?

In *North-Western Salt Co. v. Electrolytic Alkali Co.*, an English case decided in 1913, 3 K. B. 422, reported in Ann. Cases, 1915B, p. 288, the syllabus states:

"Where a contract is on its face illegal and unenforcible, being in restraint of trade, and an action is brought thereon for breaches, in order to raise the question of illegality of the contract, it is not necessary that the defense of illegality should be pleaded, the court being bound to deal with illegality apparent on the face of the contract."

In the case at bar, the question of fact, so far as this question of the invalidity of the transaction between the deceased Indian and the defendant is concerned, is settled by the pleadings; and it is a question of law whether that transaction is contrary to public policy. If it is, Ewert's deed is void, and if it is a contract of compromise, whereby, as stated by Judge Williams, he undertook to settle the issues in that case, it is simply an attempt to ratify and confirm the original transaction, then its effect no one can possibly deny.

If the compromise agreement can be traced back to the transaction charged in the petition; and, if that contract is contrary to public policy, then the compromise agreement is also contrary to public policy, and cannot be enforced. *Comstock v. Draper*, 53 Am. Dec. 78, 80, it is stated:

"It is a well settled doctrine in the English and American books, that an illegal transaction cannot constitute a good consideration for a promise. If the connection between the original illegal transaction and the new promise can be traced, if the lat-

ter is connected with and grows out of the former, no matter how many times and in how many different forms it may be renewed, it cannot form the basis of a recovery, for repeating a void promise cannot give it validity.

In this case no new element has entered into the new promise. The parties are substantially, and in law, the same. The consideration is the same, and the parties all have actual or constructive notice. The original unsoundness of the debt has flowed down to and is incorporated into the new promise. But it may be said the stream has been purified in its passage, that the judgment has purged the original taint, and the note is no longer connected with, and does not grow out of, the original illegal contract, but grows out of the judgment. Is this true? The judgment can scarcely be said to have purified the stream; it may have dammed it, and stopped the continuous flow of the current, for the period the judgment existed as a judgment; but when the judgment was discharged, the dam was removed, the impurities of the fountain again flow on, and are carried along by the current and mingle with the new promise."

In Pomeroy's "Equity Jurisprudence," Vol. 2, Sec. 964, is this statement:

"Wherever a confirmation would itself be subject to the same objections and disabilities as the original act, a transaction cannot be confirmed and made binding; for confirmation assumes some positive, distinct action or language, which, taken together with the original transaction, amounts to a valid and binding agreement. In general, contracts which are void from illegality cannot be ratified and confirmed; contracts which are merely voidable because contrary to good conscience or equity may be ratified, and thus established."

And in note to said section is this statement :

"Thus contracts illegal because opposed to statute, or to public policy, or to good morals, cannot be ratified, because the ratification itself would be equally opposed to statute, good morals, or public policy. Contracts obtained by actual fraud, by undue influence, by breach of fiduciary duty, and the like, may be confirmed, because *the parties alone are concerned*; the state or society has no special interest, as it has in those opposed to statute, public policy, or good morals."

In *Bridger v. Goldsmith*, 143, N. Y. 424, 428, 38 N. E. 458:

"A contract void as against public policy cannot be ratified or confirmed, even though a new consideration enters into a new contract when the two are indivisible."

The deed so taken was and is part of the compromise agreement, and Ewert cannot shut out any of these matters connected with his compromise instrument. *McMullen v. Hoffman*, 174 U. S. loc. cit. 657; *Embrey v. Jemison*, 131 U. S. loc. cit. 348, including the pleadings in the case; because these constitute the blazed trail which carries the court back to the original transaction, condemned as violative of public policy. As was said in *McMullen v. Hoffman*, 657:

"Here you cannot stir a step but through that illegal agreement; and it is impossible to enforce it."

As above stated, Ewert, as part of the agreement on which he bases his motion to dismiss this appeal, took from the Indian a deed to this land and presented it to



the Department for approval—he used his judgment as a means of inducing the Indian to make him this second deed; the deed is on the form of the Indian Department deeds of restricted Indian (Rec. 348, 349). His first deed being illegal, his reliance must be on his compromise and the judgment of the Court of Appeals sustaining it as valid and it is that judgment, which we are here endeavoring to have reviewed on a matter of law and conclusions of fact, both of which we contend were erroneous.

The effect of sustaining this motion and dismissing this appeal, is to leave Mr. Ewert in possession of this Indian's land under a deed made in violation of Sec. 2078, an illegal deed, and the court by its own act defeats the acts of Congress.

The contention is, and must be, either that Ewert took title by the settlement or that the settlement was a confirmation and ratification of the prior illegal agreement; but as a ratification or confirmation it is void. (*Capell v. Hall*, 7 Wall. 542, 558, 559; *Cont'l Wall Paper Co. v. Sons Co.*, 212 U. S. 227, 263.) In the last case it is said:

“No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection would be tainted with the vice of the original contract, and void for the same reason. Wherever the contamination reaches it destroys. The principle to be extracted from all cases is, that the law will not lend its support to a claim founded upon its violation.”

The Indian was as completely incompetent to make the contract as was Ewert. Both were prohibited from making a contract the law forbids. The Indian's right to prosecute his suit was not alone a private right. It was a right founded on public policy of the United States and the government was concerned that its policy be upheld, not given or contracted away. This court asks the question in *Pope Mfg. Co. v. Gormully*, 144 U. S. 224, 234, whether an action would lie for breach of a contract not to interpose a defense of public policy and answered it in this statement:

"It appears not, and the reason is, that the right to make the defense is not only a private right to the individual, but it is founded on public policy which is promoted by his making the defense, and contravened by his refusal to make it. \* \* \*

With regard to all such matters of public policy, it would seem that no man can bind himself by estoppel not to assert a right which the law gives him on reasons of public policy."

#### IV.

**The findings of the Master, Judge R. L. Williams, on reference of motion to dismiss, are not sustained by the evidence, and exceptions of appellants should have been sustained.**

We have seen that the court cannot properly pass upon a motion to dismiss based upon a settlement with the appellant by Ewert, without first determining the lawfulness of the conduct of Ewert in purchasing the land from the Indian, Redeagle; that if this court should be of the

opinion that the certificate filed herein by Judge Williams, finding that no fraud was exercised by Ewert in securing settlement and ratification, it would still be subject to the determination of the main question, that is, was Ewert qualified to purchase the land of Redeagle in the first instance? We assert that the finding of Judge Williams in his certificate filed herein is not sustained by the evidence, but is contrary to the great weight of the evidence offered before him. We will now discuss briefly the evidence offered on the motion before Judge Williams.

It is clear from this record that Judge Williams, at the commencement of the taking of testimony, considered the transaction wherein Ewert purchased this land from the Indian, was a lawful transaction, and that the sole question before him was to determine whether or not the Indian Redeagle had been overreached by Ewert and the compromise affected by fraud on the part of Ewert. Judge Williams (p. 240) said:

"That don't make any difference. I am inclined to think because he represented the department this don't prevent him from buying that land."

Again:

"He was not the Indian Agent or anything like that."

These remarks of the court were right at the inception of the taking of testimony, and without having heard same upon its merits, showing that the court had formed an opinion as to the merits in the main cause of action. It is also apparent from the court's questioning through the record that his finding is based upon the ques-

tion as to whether or not Redeagle at the time he executed the compromise agreement understood the contract and that he refused to consider the condition of Redeagle, physical and mental, during the time prior and subsequent to the signing of the compromise, and it is very apparent that Judge Williams refused to consider this compromise transaction as being any different than if it had been between white persons, refusing to follow the rule laid down by the Supreme Court of the United States as set forth hereinbefore regarding the attitude toward Indians in their conduct with white men.

### **Plaintiff's Testimony.**

Witness *Loucks* (Record, pp. 227-230), testified that she was acquainted with George Redeagle and was at his home at work in June, 1918. That Ewert came to Redeagle's home the last week in June to see Redeagle and requested the witness to bring him to Joplin. That while she was at the Redeagle home George Redeagle, the plaintiff, was there; that he was under the influence of peyote medicine, which Redeagle drank, and that this affected his mentality. That after eating it he became stupid, and there was no sense to him at all.

Witness *Wallace* (Record, pp. 230-248), testified that he lived in Ottawa County, Oklahoma, and during the months of June and July at the Redeagle farm, and slept at the Redeagle house where George Redeagle stayed. That he had known Redeagle for ten years intimately. That he and Redeagle went to Joplin on Thurs-

day, July 3, and that Redeagle got drunk on this date. That Redeagle used a drug called peyote. That after eating it Redeagle would be stupid and his eyes would turn green and seemed to stop his speech. That Redeagle drank considerable. That about the first of July, 1918, Redeagle was filled up on this medicine when he came home from the Osages in Oklahoma. That after coming home from the Osages he got to drinking very heavy and continued this until he was burned up later. That Redeagle never did any work of any kind. That when he returned from the Osage country his eyes were rather green and he appeared to be rather fleshy, awful fleshy. That there was a great difference in his appearance from that of former years.

The witness *Abrams* (Record, pp. 248-262) testified that he resided in Ottawa County, Oklahoma, and about a mile from the home of George Redeagle. That he had been clerk of the Quapaw Council for over thirty years and had known George Redeagle all this time. That he was a member of the Quapaw Tribe by adoption; that he assisted in the allotting of the Quapaw lands. That as a young man Redeagle was considered bright, and this was in March, 1888. That in 1894 or 1895 Redeagle was brought to his house and he was wild and crazy and had to have an attendant. That he then could not talk connectedly, could not attend to business and his wife was afraid of him, and he was in charge of an attendant. That thereafter Redeagle got better and was able to do business, and became reasonably bright, but later took to drink and drank a great deal and whenever

he could get money he was drinking. That he dealt with Redeagle in leasing his lands, and that Redeagle would use the money for whiskey. That his last transaction with Redeagle was in the early part of 1918, and thereafter he refused to deal with Redeagle on account of his condition; and being asked as to Redeagle's mental capacity during the year 1918, said: "*I don't think he was fit to deal. I refused to deal with him personally,*" saying that Redeagle was drinking all the time and did not have any intellect and talked foolish when drinking, and the court asked this question: "*Now, when you quit dealing with him did he have capacity to know what character of contract he was making?*" And the witness (p. 56) answered: "*I did not consider that he did, drinking so much, drunk nearly all the time. I saw him but twice, I think, last summer; twice I think; that I really thought he was sober.*" That (Record, p. 61) Redeagle did not understand how many cents there were in a dollar, and he would not consider him very bright. That when Redeagle came to him his mind was always clouded with whiskey, his face bunged up, and he would not do business with him. That Redeagle paid the witness what he owed by the witness taking it out of the rent. That the only business Redeagle did was to rent his inherited lands, and this was not management. That Redeagle never did any work; that he never made an investment of any kind, and that he never heard of Redeagle being a carpenter.

The Witness *Jones* (Record, pp. 262-267), testified that he lived in Miami, Oklahoma, and lived there for

three years, and prior thereto lived in Baxter Springs, Kansas. That he is a minister of the Gospel, and had known Redeagle for sixteen or seventeen years and had business dealings with him. That his first dealings were in 1911 and 1912, at which time he had a power of attorney from Redeagle to use certain moneys of Redeagle to employ an attorney to get Redeagle out of a charge of murder at Pawhuska, Oklahoma. That witness saw Redeagle sometimes every day and sometimes only once a week. That they were on friendly terms. That during the year 1918, he had seen Redeagle ten or twelve times. That during the last three or four years of Redeagle's life he was so different from what he had been prior thereto. That when he first knew him he was a strongminded Indian and was considered competent. That when he last saw him Redeagle wanted to lease him lands for one hundred dollars, and when the witness refused him, offered to lease the same lands for one dollar. *That this witness would not deal with him on account of his condition.* That at this time Redeagle was sober. *That he, Redeagle, would do anything for money when he needed it.* That when sober he was so weak in his life and character that he was easily persuaded and overcome and had no stability either in mind or morals.

Witness *Harvey* (Rec. pp. 267-269) testified that he lives in Baxter Springs, Kansas; has lived there for over thirty years, engaged in the furniture and undertaking business, and had been acquainted with Redeagle for more than twenty years, and knew him the last few years of his life, and was acquainted with his habits.

That he had business with him in selling furniture and in his capacity as an undertaker, and in befriending Redeagle in signing his bail to get him out of jail. That he had seen him frequently during the last year and a half or two years of his life. That when he first knew Redeagle he considered him one of the bright men of the Quapaw Tribe. That later he became addicted to the use of liquor, and that during the last few years of his life he was very much bloated, had no control of himself and had no self-respect. That during his last few years he had become a drunkard on the street, and was improvident. That during the last year of his life the witness refused to do any business with him because he had no confidence in him and did not think he had the ability to do business, and his condition existed a year or a year and a half preceding his death. And the court (p. 269) asked this question: *"Do you think he had the mental capacity to understand what a real contract was during the year 1918?"* and the witness answered: *"I don't think he did."*

The witness *Pottoroff* (Record, PP. 269-273) testified he lived in Miami for nine years; that he had known Redeagle for five or six years and had business with him. That Redeagle drank considerable. That during the last year or two of his life he had never seen him when he was not intoxicated. That he would come to the home of the witness and talk in a maudlin condition; there was no sense to his talk. That he had seen him at least a dozen times in 1918, but had not seen him sober in the year of 1918. That he believes his mind was defective when he was not under the influence of liquor.



That there was considerable change in the physical condition of Redeagle in the years prior to his death. That his face became drawn, and he had a disagreeable look to such an extent that the family of the witness, who had been acquainted with Redeagle, did not recognize him, and that his face was haggard and drawn.

The witness *Currey* (Record, pp. 273-279), living in Joplin, Missouri, attorney at law, testified that just a short time after the transaction with Ewert, Redeagle turned the management of his business over to Hicks & Estes and gave them power of attorney to manage his property. That he had never seen Redeagle except twice before this transaction with Ewert. That when an appeal was taken in this case Redeagle called at his office in Joplin, Missouri, and asked this witness for money. He was drinking and came back and asked for more money. That the witness talked to Redeagle about the Alexander Mudd estate and the interest of Redeagle therein. His conversation was incoherent, mixed and muddled, and the witness could not discover what relation Redeagle was to the deceased. That he came back repeatedly, and the same condition existed even though he was sober. That thereafter the witness found Redeagle on the street put him on the car and sent him home. The witness states that in his opinion Redeagle *was not capable of caring for himself in any kind of a contract; that he was practically without any mind.*

This completes the testimony offered by the appellant except certain letters written by Ewert. This testi-

mony clearly shows that Redeagle was a drunkard, improvident, eating dope, and incapable of doing business. The witnesses, Wallace and Loucks, living right in the home with Redeagle, testify to his habits and the effect upon his mental powers. Abrams, a very competent, able and shrewd adopted Indian, living within a mile of Redeagle and knowing him for more than thirty years, testifies to his drunken habits and crazy actions, and states frankly to the court that he had refused to deal with him in the early part of 1918, because he did not think he was fit to transact business. Harvey, a business man of Baxter Springs, Kansas, having known him for more than twenty years, testifies to his deterioration, mentally and physically, and says that for at least a year before this transaction Redeagle was incompetent and was not able to understand a contract, and that he had refused to have any business dealings with him. Jones testifies to the same thing, and Pottorff says that he had so changed, his face being bloated, that his family did not recognize him, although they had known him for years. Mr. Currey, a member of this bar, states that he, after having transactions with him about the time of Ewert's settlement with Redeagle, was of the opinion that he had no conception of the terms of a contract even when he was sober.

This is the testimony of the plaintiff offered through witnesses totally disinterested, and all of whom have known Redeagle for a great number of years, and this is the man that Ewert settled with in the absence of his counsel, litigation involving property worth a great deal

of money. This is the man that Ewert wrote letters to which in our judgment upon their face shows that Ewert knew he was attempting to settle the suit in the absence of counsel, with a drunkard, and that he would be forced to defend a charge of fraud, and proceeded by written letters to lay a predicate or foundation for defense there-to.

We call the court's attention to the letter written July 2, 1918, three days before this alleged settlement was made, written by Ewert to Redeagle, wherein Ewert wrote as follows (Record, p. 36):

"Paul A. Ewert  
Attorney and Counselor at Law,  
Frisco Building, Joplin, Missouri.

July 2", 1918.

Mr. George Redeagle,  
Baxter Springs, Kansas.

Dear Sir:

*I met you down in the corridor yesterday afternoon and you wanted to come to my office and settle the case of Redeagle v. Ewert, but as I told you then and say to you now, I will not talk any business to you when you have been drinking. I am leaving the city today to be gone for about six weeks, but I have left a check for seven hundred dollars (\$700.00) here in my office, together with the proper papers for you to sign.*

If you will come up to this office sober and in your right mind and want to sign these papers my clerk will deliver to you the check for \$700.00 as settlement in full of all our difficulties.

And may I suggest to you, that if you do make this settlement, that instead of having this check cashed and getting drunk and losing the money,

that you go and deposit the check in some bank and check against it. In that way you won't be so liable to lose the money.

If you desire to make this settlement I suggest that you come to this office at an early date. You can bring with you whomsoever you please, if they are reliable and sober persons. I have stated in my previous letters why I would not settle this case with your attorneys.

If you wish to make this settlement, you will have to do it now, as the offer will be withdrawn.

Yours truly,

PAE:CH: (Signed) PAUL A. EWERT."

Why does Ewert in the outset of this letter detail conversations that he had had with Redeagle at prior times, and state that he is leaving town and that he had made arrangements to settle with Redeagle in his absence? There can be but one answer to this, and that is that Ewert was laying a foundation for a subsequent charge of fraud. This is a peculiar letter and is indeed a novel proceeding in its recital of things that had happened prior thereto, and the first thing that Ewert did after this matter was referred to Judge Williams was to serve notice on Redeagle's counsel to produce these letters for his use in giving testimony.

We call the court's attention to the letter written July 1, 1918 (Record, p. 337), wherein Ewert goes into great detail in his letter to Redeagle about the prior proceedings in this cause, and states:

"This case has not been appealed nor any step been taken towards appealing, and if the time is not already past it soon will be when an appeal can be taken."

This letter was written, with this statement thereon, on July 1, when the judgment was rendered on the 4th day of March preceding, and Redeagle had a full six months thereafter in which to perfect his appeal. Ewert knew, of course, that the time had not elapsed, but he knew that this incapacitated Indian, if kept away from his counsel, did not know it, and was playing upon the Indian's weakness for immediate money, and in this letter Ewert further says:

"In order that you may keep this money and that it may do you some good, I would suggest to you that you deposit this check in the First National Bank of Joplin or some other good bank, and then check against it. If you cash it and get all the money you probably will get drunk and lose it, and then you will come back and say that somebody has been trying to cheat you."

Ewert knew, of course, that Redeagle would do this very thing of spending the money in a drunken spree and would then realize what had happened to him, and he was clearly laying the foundation for a defense of good faith in this compromise settlement. In the last paragraph of this letter he states that he has instructed his clerk to have nothing to do with Redeagle if he is intoxicated, and further states that he had just met Redeagle in the lobby of the building and he was drunk, and proceeds, as in the former letter, to detail conversations with Redeagle. An

unbiased mind cannot read this letter without realizing that Ewert knew he was attempting something that he would later be called upon to defend, and he has overplayed his hand, as it is inconceivable that a business man engaging in an honest transaction would proceed with such exact caution as Ewert has in this case.

Another letter of Ewert's (Record, p. 338) is as follows:

"Paul A. Ewert  
Attorney and Counselor at Law  
Frisco Building  
Joplin, Missouri.

January 3", 1918.

Mr. George Redeagle,  
Baxter Springs, Kansas.,  
R. F. D. No. 2.

My Dear Sir:

I send you a copy of the opinion rendered by the court in the case of *Redeagle v. Ewert*. *I do this, thinking perhaps your counsel may keep you in ignorance as to what the court held.* You will remember that when you were down at Vinita the court held that you had no case. Thereupon, Currey wept bitterly and asked the privilege of filing brief and getting additional information. The court has again denied that and again sustained his prior opinion holding that you have no case.

Yours truly,

PAE:CH      (Signed)      P. A. EWERT."

Here Ewert is, in January preceding this transaction, commencing to poison the mind of Redeagle against his counsel, and the court will bear in mind that these let-

ters were written by a former Special Assistant Attorney General of the United States, one who was of sufficient political influence to secure the appointment to such a high office, and one who knew or at least was charged with knowledge of the law concerning the transaction in which he was attempting to inveigle George Redeagle, and he realized that in order to effect this settlement for a nominal consideration it was necessary to do it in the absence of Redeagle's counsel, and in order to obtain this condition it was necessary to poison the mind of Redeagle against his attorneys.

We call your attention to letter written September 2, 1918, after this transaction (Record, p. 339). All of the letters received prior to the compromise transaction were formal in the salutation address to Redeagle, he being addressed as "Dear Sir," but now we find that after Ewert had obtained that which he was after—the settlement—that he addresses him as "Friend George." This is additional evidence of the fact that Ewert in writing the letters soliciting the settlement made them appear as being written to an adversary and were formal, and one that would look better in the defense of a charge of fraud, but immediately the settlement is secured Ewert lapses into a more friendly address and proceeds to write a letter which is full of bitterness towards Redeagle's counsel and a further attempt to get Redeagle away from his counsel and to keep him from taking any steps to set aside the settlement, and we will quote this letter in full as follows:

"Paul A. Ewert  
 Attorney and Counselor at Law  
 Frisco Building  
 Joplin, Missouri.

September 2", 1918.

Mr. George Redeagle,  
 Baxter Springs, Kansas.,  
 R. F. D. No. 2.

Friend George:

I have just returned from Muskogee, Oklahoma, and find there is on record there an appeal bond in the case of Redeagle v. Ewert, which was signed or appears to have been signed by you, appealing the case of Redeagle v. Ewert, and I cannot understand it. I have always believed that when you were sober you were a man of honor. You came to my office on a number of occasions and wanted to compromise the suit of Redeagle v. Ewert. I repeatedly told you that I would not compromise with your attorneys because of the feeling I had against them, and because of the fact that they induced you to bring this law suit against me, against your will. I told you that you could bring up any of your friends or neighbors, or any other attorney that you wanted, and I would make a settlement with you. You remember that I refused on one or two occasions to make a settlement with you because I thought you had been drinking. I told you I would not make any settlement with you when you had taken a drop of liquor.

You finally came to my office while I was away on my vacation, and made a settlement in the presence of honorable and reputable witnesses, you bringing with you your neighbor and friend, Mr. I. E. Enyert. You made a complete settlement; everything was explained to you, the papers were read over to you; the notary public interrogated you and told you what the effect of the signing of these papers was, and you agreed that you had bet-



ter take \$700.00 and settle the whole thing, and you settled it.

Now, I do not know whether you know what kind of papers it was that you signed for Currey, but they were appeal papers, asking to have the case appealed to the Circuit Court of Appeals of the United States. I am told that he is also getting you to sign some other papers and affidavits, and I wish to caution you not to sign anything while you are intoxicated, *for now you know what kind of attorneys they are.* You know that you made an honorable and fair settlement with me, and you ought not to further cloud my title by signing any papers for these unscrupulous attorneys. I have never said anything to you, or written anything to you but what I would say to their faces. I wouldn't talk settlement with them, although it occurred to me that perhaps they were sending you to me all the time. I don't know whether that is true or not. I wouldn't give those fellows a single dollar, or have any business relations with them.

Now George, you ought not to sign any papers. You made a fair and square settlement with me. You brought your friend, Mr. Enyert, with you to see that you got a square deal. You made the settlement with my clerk and not with me, and made it in the presence of Mr. J. C. Ammerman, the U. S. Referee in Bankruptcy, and in the presence of other witnesses. Is it fair to me now for you to cloud my title by signing additional papers which these fellows are endeavoring to get to cloud my title or to hinder me in the development of this land?

I hope that you will consider this matter and do the honorable and square thing towards me, after having settled the case in the manner that you did during my absence.

Yours respectfully,

PAE:CH (Signed) PAUL A. EWERT."

No one can read this letter without realizing that Ewert knew that he was dealing with a drunkard, and he even feels like cautioning Redeagle against his own counsel.

We submit the foregoing letters of Ewert are convincing proof of the fact that he was dealing with a drunkard, one who would squander his money and property for drink. That Ewert misrepresented the facts to this old fullblood and incapacitated Indian, and that in preparing these representations he knew that he would be forced to meet the charge of fraud and was laying a foundation on which to escape. Men who deal squarely and honestly do not act with such precise caution.

### **Defendant's Testimony.**

The witness *Deaver* (Record, pp. 279-288) said he was sixty-one years old, and Indian Agent at Shawnee, Oklahoma. That he was Indian Agent in Ottawa County, Oklahoma, from January, 1908, until March, 1918. That he knew George Redeagle for eleven years. That he was an intelligent Indian, and was used as an interpreter. That the last time he saw him was in April, 1918. That Redeagle was addicted to drink, and as he grew older this habit grew upon him, but when he was sober he noticed no difference, and thought that when sober he was qualified to do business. That in the spring of 1918 he recommended to the Commissioner of Indian Affairs that Redeagle be declared competent under leasing statute of June 7, 1897.

We impress upon the court that this recommendation of competency does not have the legal effect as in other tribes and does not remove the restrictions upon the Indian lands. It only gives power to the Indian to make a lease for a limited term without the supervision of the Indian Department.

That Redeagle was a drinking man and was an improvident Indian. At this time Redeagle did not have his restrictions removed from his land. Did not think Redeagle was weak mentally, but that he was a drunkard. Says that in April, 1918, Redeagle was competent as far as his mind was concerned, but had become more of a drunkard and become more improvident, and that Redeagle had never been a carpenter.

We stop here to emphasize this statement of the Agent that Redeagle was not a carpenter, because all other witnesses offered by the plaintiff testified to the same fact. This is emphasized because Ewert offered, as we will see later, Exhibit 3, on page 190 of the record, a letter written by the Chief Clerk of the Office of the Commissioner of Indian Affairs, stating that Redeagle was a carpenter, and further stating that he was an Indian of good character and reputation and industrious and self-supporting. We cannot help but wonder just what influence brought about this statement from Commissioner's Office, in view of the undisputed facts in this record that neither one of these conditions existed with respect to Redeagle.

The witness further says that when Redeagle was sober he knew what he was doing, and that a drinking

man who was drinking most all the time became weakened physically, and that the drinking was injuring him; and (Record, p. 288) the witness says:

"When he was sober he knew just exactly what he was doing just as well as you are. When he was sober and signed a contract I think he knew as well as you or I do, *but he was improvident, he wanted money, and he would sign it.*

*Q. That is, he would squander his estate if he was thirsty?*

*A. Yes; it made him improvident, but he knew what he was doing."*

And following, this question was asked the witness:

*"And with that knowledge in your possession you recommended to the Department he be placed on the competent list, did you?"*

*A. Yes, sir; because he knew exactly what he was doing. I figured it this way: A drunken white man was in the same position; he was smart enough; I didn't think just because he was a drunkard he ought to be protected."*

Here we have the testimony of an employe of the Indian Office, whose duty it was to protect and care for the Indians under his supervision. He was asked to make recommendation as to Indians that were competent to manage their own affairs. This Indian Agent, Deaver, here concedes that Redeagle was a drunkard, improvident, and if he wanted money he would sign a paper, and that he would squander his estate if he was thirsty. With these facts before Deaver, he under his oath as an official charged with the duty of protecting the Indian and his property, *was willing to certify falsely to his superior offi-*

cer that Redeagle was competent to manage his property, although he knew that he would squander all of it in his mad desire for whiskey. These statements of Deaver alone are amply sufficient to establish the utter incompetency and incapacity of Redeagle to make contracts, and it is a further frank admission by a public official of such dereliction in the performance of his duty that should condemn him in the eyes of this court and should destroy the force of any testimony, opinion or judgment offered by such witness.

The Witness *McCleary* (Record, pp. 288-292) says that he lived on Ewert's farm near Redeagle's home. That he saw Redeagle often. That Redeagle was strong physically. That he was very smart. That he would drink a little.

This witness will concede only that Redeagle would drink a little, although all the testimony of business men acquainted with Redeagle, as well as the Indian Agent, is that he was a drunkard.

*Ewert*, for himself (Record, pp. 292-298) testified concerning his employment by the Government. That at one time he was retained by Redeagle to bring a suit against the witness Jones, but the record is silent as to whether or not such suit was brought. He further states that he was employed to sue one of the counsel for Redeagle, but admits that he never brought such a suit, and that this last-mentioned suit was brought to recover royalties held to be due Blackhawk under the decision in the case of *United States v. Noble*.

This is a fair sample of Ewert's careless statement of facts, as an examination of the case of *United States v. Noble*, 237 U. S. p. 74, will disclose there was no such finding, and the only matter involved in that law suit was one of quieting title.

The witness *Cora Hallam* (Record, pp. 299-311), stated she was Ewert's stenographer; had been since August, 1916; identified carbon copies of letters that Ewert claimed to have written to George Redeagle. That Redeagle, during the year of 1918, came to Ewert's office in regard to settlement of this matter. That Redeagle said that he wanted to see him (Paul) to get that case settled; that he came back several times before the first of June; that he came at least twice a month. That the stipulation complained of was prepared by Ewert before he went east on July 1.

An examination of this witness' testimony is convincing that she was doing everything she could to add to Ewert's case, and tells the story in most minute details, and recites the transaction as it occurred in Ewert's office, in his absence, and shows such extreme care that will convince the court that the stenographer realized that Ewert was attempting something that was fraudulent and one that required extreme caution and careful preparation. One cannot read these letters, written by Ewert, urging Redeagle to come to his office for settlement, and believe that he had been coming as often as twice a month to his office soliciting settlement with Ewert. She details just what was said by Mr. Ammerman, a witness,

and an examination of Ammerman's testimony (Record, pp. 311-313) discloses no such conversation as detailed by Miss Hallum.

The witness *Enyert* (Record, pp. 313-327) states he is a farmer and tenant of Redeagle, and that he witnessed the signing of the stipulation. That he took Redeagle to Joplin to make this settlement. *That Redeagle paid him one hundred dollars to take him to Ewert's office.* That it is twenty-three miles from Redeagle's home to Joplin, although an electric car connection was within a short distance of Redeagle's home, over which Redeagle could have gone to Joplin for an expense of not to exceed one dollar. That witness stayed with Redeagle all day of the Fourth of July, and stayed with him until he took him and put him to bed, and the next day met him and took him to Ewert's office. Ewert's office being closed on the Fourth day of July. That during all of the day of the Fourth Redeagle did not take a drink. That as soon as Redeagle got the money from Ewert's office he paid this witness one hundred dollars, and he saw Redeagle no more that day.

The witness *Cousatt* (Record, pp. 329-334) testified he was a miner, acquainted with Redeagle, and he had known him since he was a boy. That he was with Enyert and Redeagle on the Fourth day of July in Joplin. That he and Enyert stayed with Redeagle all day and until ten o'clock at night, when Redeagle went to bed. That during the Fourth day of July Redeagle did not drink, although this witness was with him all day. That on the

fourth day of July, while Redeagle was with them, he and Enyert would go into saloons and drink but that Redeagle would not drink, but would go in with them. That they in this manner went into a good many saloons that day, but in each and every case Redeagle would not take a drink.

We have the peculiar situation of the witness Enyert taking Redeagle to Joplin for one hundred dollars on the fourth day of July, and there meeting the witness Cou-satt, who stayed with Redeagle all day and visited a good many saloons, and this man who, according to all of the witnesses was a drunkard and would sacrifice his property for a drink when thirsty, would go into saloons with them but never touched a drop.

Without further comment on the testimony of these two witnesses, it is quite apparent that these two men were interested in this transaction and made it a business to stay with Redeagle all day prior to this settlement, in order that they might testify as to his condition at the time of signing the stipulation. This court knows from the history of the influence of whiskey over Indians that this story of these two men is too improbable to be worthy of belief.

The evidence shows a clear intent on Ewert's part to defraud this Indian. The parties were not on equal footing. Ewert was a lawyer, and the plaintiff an Indian layman. The fact that Redeagle could read and write did not make him any less an Indian with all the racial instincts of an Indian. Ewert, as shown by his letters, and by his admissions as a witness, had been attorney for



Redeagle, and had advised him not only as to his legal matters, but as to his family affairs. He had written him several letters regarding this suit, and posed as his friend and protector of him and his family. He sought by his letters to impress upon Ewert's mind that his attorneys were incompetent. This is shown by his letter written to Redeagle telling him of the decree rendered in his favor and against the plaintiff. It is also shown in other letters. He proclaimed in his letters his friendship to Redeagle. He wrote a letter to Redeagle's wife in which he sought to poison the mind of Redeagle against his attorneys. He sought to impress on Ewert's mind the proposition that the time for his appeal had just about elapsed, although at the time he wrote the letter more than two months remained within which to take the appeal. He avoided saying in plain words the time for appeal had elapsed, but he did a thing much more calculated to deceive and mislead the Indian. He informed him that the time had about elapsed, saying nothing had been done to take the appeal, and the time will soon, if it has not already elapsed, within which an appeal can be taken. He went to Redeagle's house and importuned the woman, staying there to bring Redeagle to his office. He wrote Redeagle a letter in which he undertook to advise him with reference to what he could do with his funds.

It would be hard to devise a scheme better calculated to deceive and mislead the Indian. He wouldn't have been less guilty of fraud had he told the Indian in so many words that the time had elapsed for his taking an appeal,

or had he told defendant that his counsel had deserted him. All that he did say to him in his letters were half truths, and "Truths that are half truths are ever the blackest of lies." Because they deceive and mislead the mind where a palpable lie might be detected and repelled.

It is not necessary to show that express false statements were made that deceived the Indian. It is enough to know that the Indian was deceived. The fact that the Indian, within the time allowed under the superintendency of his attorneys, did take his appeal, either signifies that he was deceived or it signifies that he was so unsteady and unreliable as not to be capable of taking care of himself.

In *Stewart v. Rancho Co.*, 128 U. S. 383, 388, it was held that the gist of the action for fraud is the producing of a false impression on the mind of the the other party. And it is held that if this result is accomplished it is unimportant whether the means of accomplishing it are words or acts of the defendant, or concealments or suppression of facts.

Ewert wrote this Indian telling him that his case had been decided against him, and that his attorneys were greatly chagrined. This was true. But for what purpose was it written? And why take so much pains to tell the Indian that his attorneys were of no account? And why tell the Indian what the Judge had said? Unless he was intending to get the Indian under his control why write him anything at all? Upon what grounds can that letter and the letter he wrote Redeagle's wife and the other letters he wrote Redeagle be justified, if not upon the

ground that he was seeking to bring Redeagle under his control? If these letters were written because of his great friendship and care for the Indian, then he is subject to the rule that forbids a fiduciary to deal with his correlate without such correlate having independent advice. And which rules places upon Ewert the burden of showing that the transaction was not only free from fraud, but beneficial to the Indian.

In the case of *Roberts v. Tompkins*, 73 Atl. 505, the court dealt with a case where there was no fiduciary relation, and the obligation to state the whole truth and the duty of the court to find fraud where the circumstances show any character of suppression of facts, is stated, page 506, in this language:

"It is urged for the appellant that no statement made by him was materially false, and that the complainants are driven to charges of *supressio veri* which are not contained in their bills. We do not agree with this view, but if it were true that no absolutely false statement was made, the case would still fall within the rule in *Lomerson v. Johnson*, 47 N. J. Eq. 312, 20 Atl. 675, 24 Am. St. Rep. 410, where it was said: 'In order to establish a case of false representation, it is not necessary that something which is false should have been stated, as if it were true. *If the presentation of that which is true creates an impression which is false, it is, as to him who seeing the impression, seeks to profit by it, a case of false representation.*' See also 20 Cyc. pp. 23 and 24. There can be no doubt that the several complainants derived a false impression of their rights from what defendant told them, and that he intended that they should, or at least saw that false impression, and undertook to profit by it."

There are many cases holding that where the transaction shows a studied design to give it the appearance of a fair transaction, such studied purpose is itself *a badge of fraud or proof of fraud*.

The court will bear in mind that prior to July 1st, the evidence shows that Ewert had gone to Redeagle's house and insisted on his housekeeper bringing Redeagle to his office. The decree was on the 4th of March. It lacked only four months from the date of the decree to the date of this letter. There is no evidence that Ewert had any conversation with Redeagle, except such as may be inferred. He had previously written to Redeagle and incorporated into his letter the decree. And as early as January 3, 1918, and before the decree was entered he sent a letter to the Indian, and sent him what purported to be a copy of the court's opinion, and said: "I do this thinking perhaps your counsel may keep you in ignorance as to what the court held." He then states:

"This case has not been appealed, nor has any steps been taken towards appealing, and if the time has not already passed it soon will be, when an appeal can be taken. I want you to understand thoroughly what your rights are and just what you are doing."

This is exactly tantamount to that which has taken place in transactions which the courts have held the part was overplayed and the fraud made obvious. He was actuated by exactly the same principles that one about to make a fraudulent conveyance is when he calls in the notary and has a witness to see that everything is fair,

which circumstance has always been held to be evidence of fraud—honesty overacted. So very careful then, is he to make an appearance of fairness, having already gotten the upper hand of the Indian, that he tells him that if he signs "*this stipulation for dismissal that ends the case forever.*"

The case was already ended forever so far as the trial court was concerned. And his statement that the case has not been appealed nor has any steps been taken towards appealing it, and *if the time has not already passed it soon will be, when an appeal can be taken*, was intended to warn the Indian that he must come quick; and you will note that he has carefully refrained from telling the Indian that he has six months from the date the decree was rendered within which to appeal. He cannot risk the plaintiff's counsel to inform him of the opinion of the court, and he tells him *for fear they will not do it*, he is writing him. This has a double purpose. It is to get control of the Indian and to poison his mind against his counsel. His statement, "thereupon, Currey wept bitterly and asked the privilege of filing briefs and getting additional information," is a resort to ridicule for the purpose of operating upon the mind of this weak-minded Indian, the member of a race, racially suspicious.

And notice his extreme vigilance in showing his paternal care for the Indian in his letter of July 1st:

"In order that you may keep this money and that it may do you some good, I would suggest to

you that you deposit this money in the First National Bank of Joplin or some other good bank and then check against it."

In every one of these letters he discloses that he knows that Redeagle is an habitual drunkard.

And still pursuing his design of showing a fair transaction, he states:

"I have instructed my clerk that under no circumstances shall she have any dealings with you when you are intoxicated. I just now met you down in the lobby of this building in an intoxicated condition and you wanted to come to this office and I told you I would have nothing to do with you while you were in this intoxicated condition."

Why this statement? There can be but one explanation. That is, that he was preparing evidence that the transaction was fair. And notice this statement:

"I have advised my clerk to the same effect, and if you are intoxicated when you come into this office, I want you to state it, if it cannot be observed; if you have been drinking any, when you come into this office I want you to tell my clerk of that fact and she will have no business relations with you."

These letters unquestionably bring this defendant within the purview of the line of cases above suggested. And as further showing this design, he had this drunken Indian to make the statement that he had been induced to bring the suit against his will.

Circumstances indicating excessive effort to give the transaction the appearance of fairness or regularity,

which are not usually found in such transactions, are to be regarded as badges of fraud.

*Hart v. Sandy*, 39 W. Va. 644, 20 S. E. 665.

In 20 Cyc. page 450, title, "Attempt to Give Appearance of Fairness," it is stated:

"Circumstances indicating excessive effort to give the transaction the appearance of fairness or regularity, which are not usually found in such transactions, are to be regarded as badges of fraud."

Ewert's conduct in allowing Redeagle to believe that his case could be dismissed, when in fact it could not, and to allow him to believe that his counsel had quit him and abandoned his case, when he had no reason to believe the same to be true, and that the time for his appeal had or was about to expire, was fraudulent. Whenever one person permits another to believe in a state of facts which does not exist, or to believe that certain things exist which the speaker knows does not exist, and such other person is thereby induced to enter into a contract, such transaction will be set aside because fraudulent. And even statements of truth, which the speaker knows, or has good reason to know, or believe, that such statements are creating a false impression, and they do, in fact create a false impression on the mind of such other person, and the transaction is thereby induced, such transaction should be set aside for fraud, and it is not even necessary that the party making the statements knows that such has been the effect, when such is the condition of mind of the other person.

In *Mooney v. Davis*, 75 Mich. 188, it is stated:

"As regards the first, neither the concealment nor misrepresentation need be willful or intended in order to constitute the fraud which will vitiate the contract. It is sufficient if they have the effect to defraud."

In 14 Am. & Eng. Enc. Law (2nd Ed.), p. 74, subsection *ee*, is this statement:

"Where a party has by his representations or conduct contributed to another's misapprehension, and intentionally fails to correct the misapprehension, he is guilty of fraud."

In *Manter v. Truesdale*, 57 Mo. App. 435, 443, it is stated:

"If he fails to disclose an intrinsic circumstance that is vital to the contract, knowing that the other party is acting upon the presumption that no such fact exists, it would seem to be quite as much a fraud as if he had expressly denied it, or asserted the reverse, or used any artifice to conceal it, or to call off the buyer's attention from it."

It cannot be doubted, as we will later show, that the relation of Ewert and Redeagle was such, even if the court should conclude there was no fiduciary relation between them as impelled Ewert to make full and clear disclosures to the understanding of the whole matter as a condition to his right to enter into a contract with Redeagle for the dismissal of his case.

In *Loewer v. Harris*, 57 Fed. 368, 373, the court stated the law as above from the American Encyc., and



after stating that the law requires disclosure only when the duty arises to make it, and that such duty does not arise merely upon the fact that one party knows something the other party does not know, makes this statement :

“\* \* \* but when one of the parties, pending negotiations for a contract, has held out to the other the existence of a certain state of facts, material to the subject of the contract, and knows that the other is acting upon the inducement of their existence, and, while they are pending, knows that a change has occurred, of which the other party is ignorant, *good faith and common honesty require him to correct the misapprehension which he has created.* It becomes his duty to make disclosure of the changed state of facts, because he has put the other party off his guard. The doctrine is thus stated by Mr. Pollock, in his work, *Principles of Contracts* (page 491) :

‘It is sufficient if it appear that the one party knowingly assisted in inducing the other to enter into the contract by leading him to believe that which was known to be false. Thus it is where one party has made an innocent misrepresentation, but, on discovering the error, does nothing to undeceive the other.’ ”

And on the same page, near the top, is this statement :

“It is an elementary proposition in the law of fraud that, if one party to a contract knowingly assists in inducing the other to enter into it by leading him to believe that which he himself knows to be false, *his conduct is fraudulent*, and it matters not whether the result is brought about by misrepresentation or by keeping silent when duty requires a dis-

closure. As was said in *French v. Vining*, 102 Mass. 135:

'Deceit may sometimes take a negative form, and there may be circumstances in which silence would have all the legal characteristics of actual misrepresentation.' "

Judge Campbell, in the case of *Moore v. Sawyer*, 167 Fed. 826, cites and quotes from this 57 Federal Case, and on page 839, quoting from the case of *Wheeler v. Smith*, 9 How. 55, made this statement:

"One of them, a lawyer, stated to complainant that in his opinion the will was valid, but the compromise was made to avoid litigation. The Supreme Court say:

'The complainant, it seems, had studied law, but it is manifest from the facts before us that he was but little acquainted with business, as an inefficient and dependent man, easily misled, especially by those for whose abilities and characters he entertained a profound respect. From the high character of the executors, no one can impute to them any fraudulent intent in this transaction. Looking to what they considered to be the object of the testator, they felt themselves authorized, if not bound, to effectuate his purpose by making this compromise with his heir at law. They had no personal interest beyond that which was common to the citizens of Alexandria. And we admit that they may have acted under a sense of duty, from a misconception of their power under the will.

'But in making the compromise, the parties did not stand on equal ground. The necessities and character of the complainant were well known to the executors. Having the confidence expressed in the validity of the devise, they could hardly have felt themselves authorized to pay to the complainant

twenty-five thousand dollars for the relinquishment of a pretended right. Nor could they have deemed it necessary, in the agreement of compromise, substantially to constitute him the donor of the munificent bequest to the town and trade of Alexandria.

'We are to judge of this compromise by what is stated in the bill, the facts being admitted by the demurrer. And it appears to us that the agreement, under the circumstances, is void. It cannot be sustained on principles which lie at the foundation of a valid contract. *The influences operating upon the mind of the complainant induced him to sacrifice his interests.* He did not act freely, and with a proper understanding of his rights.' "

The court will please keep in mind the statements in these two letters. After stating to the Indian that his time for appeal had about elapsed, if it had not in fact elapsed, and that nothing had been done by his attorneys to take an appeal, which was intended to, and was calculated to, and did in fact fix the notion in the mind of Redeagle that his attorneys were paying no attention to his case, and that the time for appeal had elapsed or was just about to elapse, he stated to him that he could bring any other attorney or any of his neighbors with him to his office for the purpose of making the adjustment, and then advised him with reference to what he could do with the money received from him. Statements, representations and conduct similar to these have been often dealt with by the court. Ewert kept silent on the one essential thing, viz., to say to Redeagle, Go and consult your attorney, Mr. Currey; he has an office right here in Joplin; his office is in the Court House building on Fifth Street; go and see him; and to state to him, "You have six

months from the date of your decree within which to appeal." But he sought to avoid the effect of his fraud by writing these letters. But he cannot avoid the consequences of the impression which he created in the mind of Ewert by giving him advice as in these letters.

In 2 *Pomeroy's Equity* (Third Ed.), Sec. 896, page 1601, is this statement:

"If, therefore, the party accompanies or follows his misrepresentation by words of general caution, or by advice to the other that he consult his friends or professional advisers before concluding the agreement, he does not thereby counteract any effect upon the transaction which his untrue statement would otherwise produce."

And in the note on the same page it is stated, quoting from an English case:

"No such question can arise in a case like the present, where one contracting party has intentionally misled the other, by describing his rights as being different from what he knew them really to be. In such a case it is no answer to the charge of imputed fraud to say that the party alleged to be guilty of it recommended the other to take advice, or even put into his hands the means of discovering the truth. However negligent the party may have been to whom the incorrect statement has been made, yet that is a matter affording no ground of defense to the other. No man can complain that another has too implicitly relied on the truth of what he has himself stated."

And again, Sec. 881, page 1572, is this statement:

"If it can be shown that a material representation which is not true is contained in the pros-

pectus, or in any document forming the foundation of the contract between the company and the shareholder, and the shareholder comes within a reasonable time, and under proper circumstances, to be released from that contract, the courts are bound to relieve him from it.' "

And in Sec. 880, pages 1568, 1569 and 1570, the author says:

"If, therefore, a representation made prior to the transaction, and directly relating to it, it is of such a character that it would naturally and reasonably induce, or tend to induce, any ordinary person to act upon it, and enter into the contract or engage in the transaction, and is in fact followed by such action on the part of the other person, then it will be presumed that it was made for the purpose and with the design of inducing that person to do what he had done—that is, to enter into the agreement or engage in the transaction. The design will be inferred from the natural and necessary consequences. It is not necessary that all the representations by which a party is induced to act should be untrue. The cases hold that where certain statements have been made all in their nature capable, more or less, of leading the party to whom they are addressed to adopt a particular line of conduct, *and any one of them is untrue*, the whole contract or other transaction is considered as having been obtained fraudulently; the court cannot discriminate among the different statements, nor say that the untrue representation is not the very one which induced the party to act. The foregoing general proposition, that it is sufficient if the statement is of such a character as would naturally induce any ordinary person to enter upon a particular line of conduct, and is actually followed by such conduct, is the practical rule by

which the courts determine whether a misrepresentation possesses the particular element of fraud—the purpose or design—now under consideration.”

Not only should the court consider the statements made by Ewert in his effort to make this transaction appear fair, but it must not be overlooked that the record gives the most positive proof that he was seeking out Redeagle, and not Redeagle seeking him out, and that his statements were false. This is shown by the woman who testified that Ewert came to her house some time before any of these letters were written inquiring for Redeagle; that he pushed the door open and looked around. He wanted Redeagle to come to Joplin and come to his office, and it was after this incident at his house—and Ewert made no pretense of contradicting this woman—that he wrote the letter to Redeagle, saying. “I saw you down in the lobby of this building drunk.” No doubt if he saw Redeagle he was drunk, but the circumstances all point to the fact that he was inducing him to come to Joplin and get to his office and to whet his appetite for liquor; and then parade his intention of only dealing with him when he was sober, and making the transaction look fair. All these circumstances point unmistakably to the fraudulent purpose of Ewert.

In 2 *Pomeroy's Equity*, Sec. 877, page 1560, it is stated:

“In the great majority of instances it is made by means of language written or spoken; but it may consist of conduct alone, of external acts, when,

through this instrumentality, it is intended to convey the impression, or to produce the conviction, that some fact exists, and such result is a natural consequence of the acts." -

There can be no doubt but that the defendant, by his letters and talk sought to, and did, create the impression in the Indian's mind that the law was all against him; that it was held by the trial judge, which was emphasized with great force, that he had no case; that the time for his appeal was practically gone. Whereas, the legal truth was that ample time remained within which to take his appeal. He deceived and misled the Indian and created false impressions in his mind, both as the law and facts will show.

If the statements and conduct of the defendant—considered in the light of Redeagle's mentally weakened condition by intoxication, and the fact that he is an Indian—is of such character as may reasonably be supposed to have influenced him, then Ewert is guilty of fraud which renders the instrument voidable.

*Berry v. Insurance Co.*, 132 N. Y. 49, was a suit to set aside a settlement of a total loss by fire of a building insured by the defendant. The policy contained a clause making it void, as the insured did not own the property. The insurance adjuster read this clause to the plaintiff and told him he could not recover and that as he did not have any title he was guilty of a fraud, because it was fraudulent to insure property without title. The plaintiff settled with the insurance company and received \$400. The facts were that the plaintiff had no title; that he was

in possession of the property and had an understanding with his son who owned it, that he would keep it during his life and keep the insurance paid up. The court held that where it was shown that the plaintiff surrendered legal right intentionally induced by false representations as to the law governing the case, he was entitled to relief and set the settlement aside and gave the plaintiff judgment for the whole amount of his loss. As showing how courts of equity treat these matters, we quote at large from Sec. 125, *Black on Rescission*, as follows:

"The common law, in regard to the exercise of vigilance to detect and guard against fraud, sets up a purely artificial standard of conduct to which every person is expected to conform, that, namely, of the 'man of ordinary care and prudence.' *If the victim of a fraud happens not to be a person of ordinary care and prudence, it is so much the worse for him and so much the better for the person who has defrauded him. But by the principles of equity, every case is to be determined according to its own particular circumstances, and it is eminently proper, and necessary to a right decision, to take into account the relative situation of the parties with reference to mental capacity, experience, shrewdness, and native cunning. The test should therefore be, whether or not the false representations were such as were calculated to deceive a person of such a degree of intelligence and experience as the defrauded party did actually possess, and were such as a person of that measure of intelligence might well be supposed to accept and rely on, and not whether he might have discovered their falsity by the exercise of care and vigilance. This principle is vigorously stated by the Supreme Court of Vermont in the following terms: 'No rogue should enjoy his*



ill-gotten plunder for the simple reason that his victim is by chance a fool.' So a distinguished text-writer remarks: 'It has been said that a false representation, to impose liability on its maker, must have been calculated to impose on a person of ordinary sagacity. *But this limitation cannot be sustained*, as persons of less than ordinary sagacity are as much entitled to be sheltered from swindlers as are persons of greater shrewdness. Hence, if a party is really imposed upon, and has not in fact negligently exposed himself to imposition, he can obtain redress if damaged by fraudulent representations whose unreality a person of greater intelligence would have promptly discovered.' 'It is well known that many good people, and people of average or greater intelligence, are sometimes duped and misled by the skill, cleverness and artifice of those who are adepts in the matter of deceiving their fellowmen; and courts should not throw about schemers of this kind a protection that will tend to encourage the practice of their arts. \* \* \* It is not the function of courts to make contracts for parties, or to relieve them from the effects of bad bargains. *But where the simplicity and credulity of people are taken advantage of by the shrewdness, overreaching and misrepresentation of those with whom they are dealing, and they are thereby induced to do unwittingly something the effect of which they did not intend, foresee, or comprehend, and which, if permitted to culminate, would be shocking to equity and good conscience, we think a court of equity may with propriety interpose.*' "

Again, in the same section at page 355, is this statement:

"And elsewhere it is said that a treaty respecting an important interest, conducted by two persons

of unequal powers—one with a naturally unsound judgment, rendered still weaker by a long-continued habit of intoxication, and the other enterprising, keen and sagacious in business, the weaker mind trusting the stronger, that influence increased by pecuniary embarrassment on the one side and pecuniary power on the other, and resulting in a contract exhibiting great inadequacy of consideration—presents a claim to equitable relief.”

And the following is stated in the same section, commencing at page 356:

“So, representations made by a lawyer to a person who has no knowledge of the law or experience in it may furnish ground for relief, notwithstanding a want of ordinary prudence, particularly where they relate to matters of law, or even where they relate to mere matters of business, if the party duped is a client and accustomed to trust his attorney and rely on his statements. And a deed of lands for less than their real value, given to one who was greatly the superior of the grantor in intelligence, and who, sustaining confidential relations to him, played on his unwarranted fears of losing the land by foreclosure, will be set aside.”

We submit without further comment that the evidence clearly shows that at the time this stipulation of compromise was had, Redeagle was imposed upon; that the release obtained was the result of a cunning and well planned scheme on the part of Ewert to take advantage of Redeagle in the absence of his counsel; that at this time Redeagle was hopelessly incapacitated from transacting business, and that no court of equity should permit such unconscionable conduct on the part of a lawyer at the bar of this court to stand.

## V.

**The court erred in excluding letters of appellee showing his authority as outlined in our Assignment Number Seven.**

These letters (R. 149-156) certainly bind the appellee as to scope of his employment, and we are at a loss to understand why they were excluded.

We have not discussed in detail Assignment of Error Eight. We insist, however, that it was an abuse of discretion for the court to refuse to reopen the case when the letters offered as evidence of good faith so abundantly showed the bad faith and duplicity of appellee as a Special Assistant Attorney-General. The letters (R. 38-59) disclose the attempt to influence the Indian Office to approve the Bluejacket deed purchased by Ewert in his own name and a studied and successful attempt to prevent such office from learning that he was the real purchaser of the Redeagle land. This was a fraud alone sufficient to have set aside the deed.

The petition for a rehearing should have been granted for all of the reasons herein given.

### **Conclusion.**

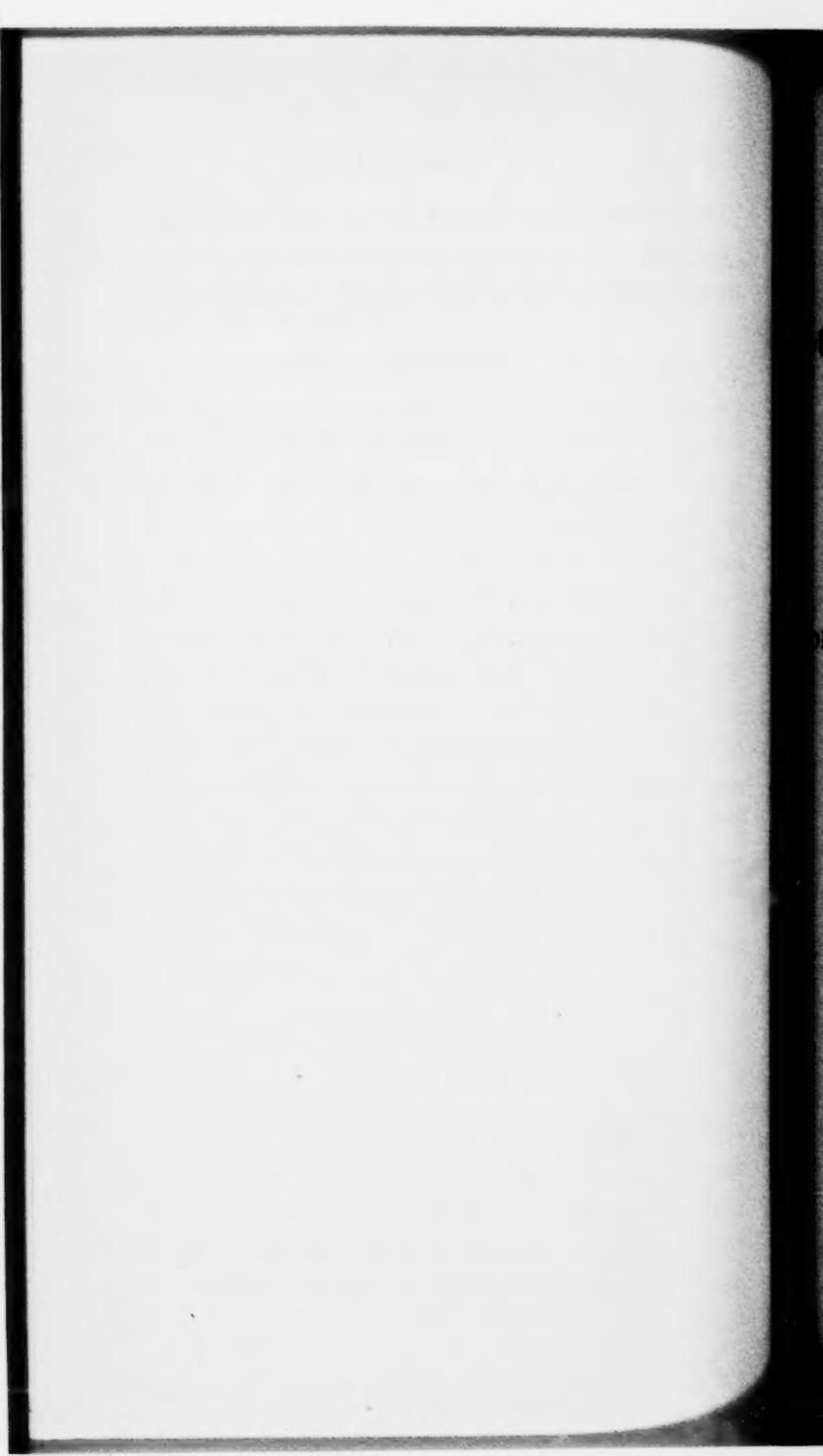
We earnestly urge that we have established that: (1) Appellee was without capacity to purchase; (2) he could not settle or compromise an unlawful transaction; (3) no statute of limitation or doctrine of laches can be used by appellee to invest him with title to restricted Indian

land contrary to and in violation of Acts of Congress;  
and (4) the purported settlement itself was obtained  
by overreaching an old incapacitated full-blood Indian.

Respectfully submitted,

ARTHUR S. THOMPSON,  
Miami, Oklahoma,

*Attorney for Appellants.*



No. 157.

FILED

FEB 28 1922

WM. R. STANSBURY

CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1921.

**JOHN S. KENDALL, ADMINISTRATOR OF THE ESTATE  
OF GEORGE REDEAGLE, DECEASED, LEROY RED-  
EAGLE, DOANE S. REDEAGLE, AND JOSEPHINE  
REDEAGLE ABRAMS, HEIRS AT LAW OF GEORGE  
REDEAGLE, DECEASED, APPELLANTS,**

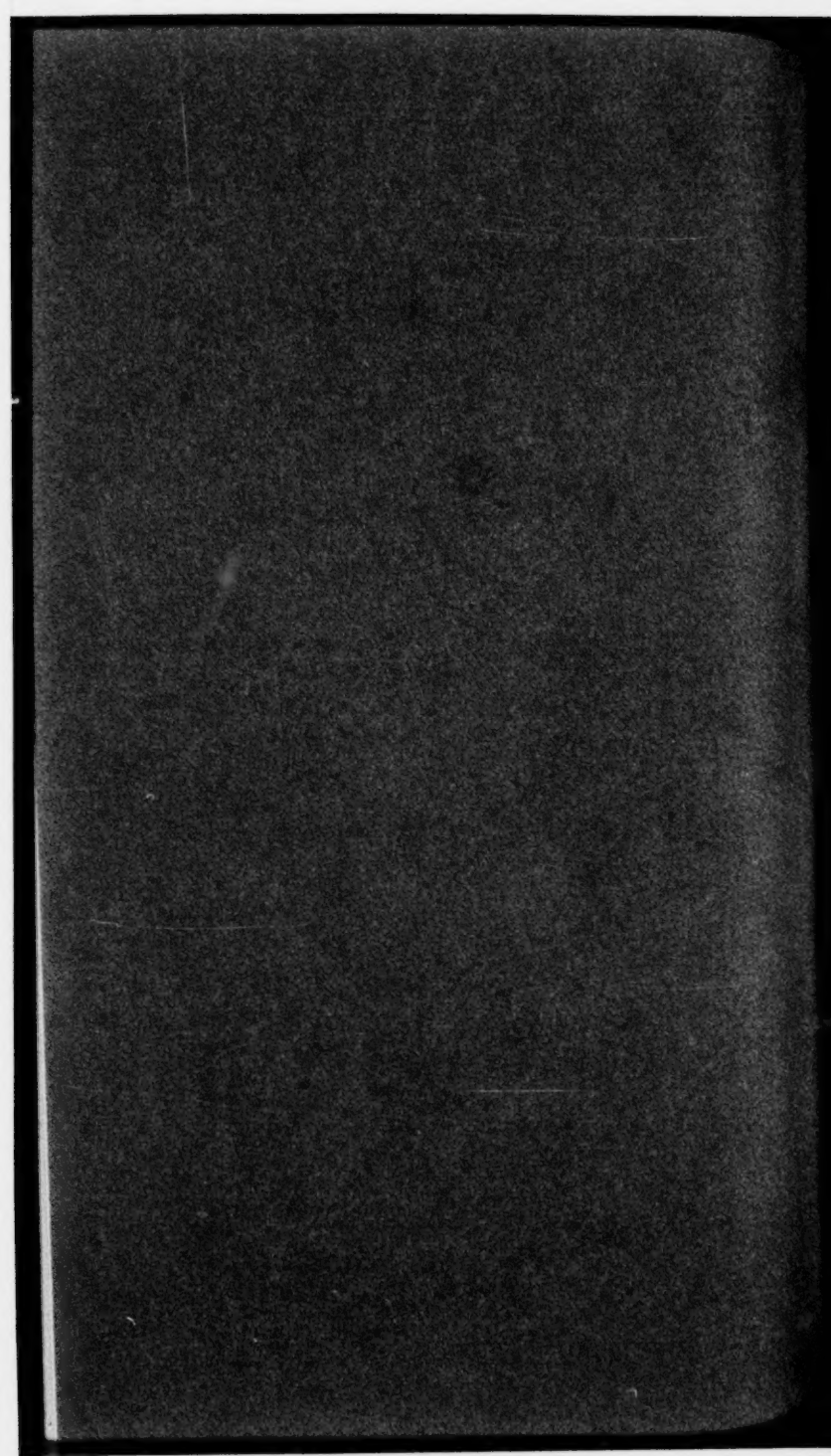
**VS.**

**PAUL A. EWERT, APPELLEE.**

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.**

**MOTION TO STRIKE FROM THE DOCKET AND  
DISMISS THE APPEAL.**

**HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,**  
*Attorneys for Appellee.*



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EAGLE, DOANE S. REDEAGLE, AND JOSEPHINE  
REDEAGLE ABRAMS, HEIRS AT LAW OF GEORGE  
REDEAGLE, DECEASED, APPELLANTS,

VS.

PAUL A. EWERT, APPELLEE.

---

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

---

**MOTION TO STRIKE FROM THE DOCKET AND  
DISMISS THE APPEAL.**

The appellee in the above entitled action now respectfully  
moves the court to strike the above entitled case from the docket  
and dismiss the appeal herein with prejudice for the reason that  
there was filed on the 31st day of December, 1921, with the clerk  
of this court and there is now on file a stipulation to dismiss the  
said suit and appeal with prejudice, said stipulation being signed  
by all of the appellants having any interest whatsoever in the con-  
roversy. Said stipulation further reciting that said suit had been  
settled by the parties thereto and deeds issued by all of said ap-



pellants conveying to the said Paul A. Ewert, appellee herein, all their right, title and interest in and to said lands, the restrictions against alienation of said land having previously expired, to-wit: On the 26th day of September, 1921.

And for the further reason that the Honorable Secretary of the Interior of the United States, in the manner provided and empowered by law, on the 27th day of January, 1922, approved unconditionally that certain deed to the land here in controversy, made, executed and delivered by George Redeagle to the appellee under date of July 5th, 1918, a certified copy of which deed is now on file in this court with the clerk thereof.

And for the further reason that the said appellants, Leroy Redeagle, Sophia Josephine Redeagle Abrams and Doane S. Redeagle, have, since the expiration of the restrictions upon the land here in controversy, by separate instruments made, executed and delivered to the said Paul A. Ewert, appellee, for a total consideration of eighteen thousand dollars (\$18,000.00) warranty deeds conveying unto the said appellee all their right, title and interest in and to the said lands here in controversy, duplicate copies of which said deeds are now on file with the clerk of this court.

And for the further reason that because of the above facts so recited all questions involved in said suit have now been disposed of and have become and are moot questions of law.

The above motion is based upon the records and papers now on file in the office of the clerk of the Supreme Court of the United States in said case and those further set forth in full in the brief herewith submitted.

Respectfully submitted,

HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,  
*Attorneys for Appellee.*

**Early and Appropriate Action Desirable and Necessary.**

In that it now appears from the records on file in this court that a stipulation for dismissal has been filed by all persons interested in the outcome of said suit; that the appellants have now by deed or warranty conveyed to the appellee all of their interest in the lands in controversy, and that the Secretary of the Interior of the United States has also approved the original deed made by George Redeagle during his lifetime, now deceased, under date of July 5th, 1918, conveying to the appellee herein full title to the lands in controversy, there is nothing before this court and the appeal pending in this court should be dismissed forthwith in order to avoid unnecessary expense of preparing, printing and filing briefs in the main case now pending on appeal from a motion to dismiss granted by the United States Circuit Court of Appeals.

In explanation, it should be here stated that there is also pending in this case a motion to dismiss the appeal upon other grounds, upon which motion this court laboring under a misapprehension, ordered that said motion should be heard along with the main case on its merits. This court apparently labored under the misapprehension that this case is pending in this court upon an appeal upon the merits. Such is not the fact. The original case now docketed in this court is here on appeal from an order of the United States Circuit Court of Appeals for the Eighth Circuit dismissing the appeal in that court. A motion was filed in the Circuit Court of Appeals asking that the appeal be dismissed upon the ground that the case had been settled in the lower court between the original plaintiff, George Redeagle, and Paul A. Ewert, the defendant, and expressly dismissed by express stipulation.

This case is not here upon its merits and cannot be so considered at this time. The main case has never been heard by the United States Circuit Court of Appeals upon its merits.

### STATEMENT OF THE CASE.

This suit was originally instituted by the plaintiff, George Redeagle, now deceased, during his lifetime for the purpose of having declared null and void a certain warranty deed dated March 10th, 1909, conveying to Franklin M. Smith, the agent of the defendant, Paul A. Ewert, by deed of warranty certain inherited Quapaw Indian lands, said deed having been made, executed and delivered by the said George Redeagle under and pursuant to the laws of the United States providing for the sale of inherited Indian lands by, through and with the consent and approval of the Secretary of the Interior of the United States, and which said deed was thereafter and on the 30th day of April, 1909, approved by the Secretary of the Interior of the United States and delivered to Franklin M. Smith and by him conveyed to the appellee, Ewert.

Numerous maliciously untrue statements appeared in the plaintiff's petition, apparently for publicity purposes. No attempt was made at the trial to prove any of them. They appeared upon the face of the petition to be in fact false and so conclusively shown by the public records. The only question at issue being whether or not Paul A. Ewert was entitled to receive this conveyance, even though the sale was made through the Secretary of the Interior of the United States, by reason of the fact that he at that time was a Special Assistant to the Attorney General of the United States, specially employed by the Attorney General of the United States "to assist in the institution and prosecution of suits to set aside deeds made to certain allotments in Quapaw Agency" (Tr. of Rec. p. 19). No other question of any kind, notwithstanding the pleadings, was by the evidence presented to the trial court in the Eastern District of Oklahoma. The evidence discloses in this case and in another case now pending in this court, *i. e.*, *Ewert v. Bluejacket et al.*, No. 173, that the lands were purchased at public sale to the highest bidder through the office of the Secretary of the Interior under the laws of the United States providing for the sale of inherited Indian lands, upon the theretofore given opinions of both the Attorney General of the United States and the Secretary of the Interior of the United States that such a sale and conveyance to Ewert could be lawfully made. That it was not in violation of Section 2078, R. S. U. S. which reads as follows:

"No person employed in Indian affairs shall have any interest or concern in any trade with Indians except for and on account of the United States; and any person offending herein shall be liable to a penalty of five thousand dollars and shall be removed from office."

The case was tried to the Honorable Ralph E. Campbell, Judge of the United States District Court in and for the Eastern District of Oklahoma, who also held that Ewert had a perfect right to receive the conveyance and that the deed was valid. A decree was entered on March 4, 1918 (Tr. of Rec. 356-357). On July 5th, 1918, and before the time for appeal to the United States Circuit Court of Appeals had expired, the plaintiff, George Redeagle, in person entered into a stipulation with the defendant, Paul A. Ewert, in person, dismissing the case with prejudice (Rec. 186). At the same time the said George Redeagle made, executed and delivered to Paul A. Ewert, for an adequate consideration, a deed to said lands, subject to the approval of the Secretary of the Interior of the United States in the manner provided by law.

Thereafter, and before the time for appeal had expired, counsel for the plaintiff, Hiram W. Currey, now deceased, without advising the Honorable Ralph E. Campbell that the case had been settled by stipulation and the giving of the deed by Redeagle to Ewert on July 5, 1918, filed a petition asking for an appeal to the United States Circuit Court of Appeals signed by himself (Rec. 177) and the appeal was in form allowed. The case was docketed in the United States Circuit Court of Appeals for the Eighth Circuit. Thereupon, the appellee, Ewert, made and filed his motion in the Circuit Court of Appeals of the United States asking to have the case stricken from the docket and to dismiss the appeal (Rec. 199). In the meantime, George Redeagle died and the case was revived in the name of his sole heirs, Leroy Redeagle, Sophia Josephine Redeagle Abrams and Doane S. Redeagle, and also John S. Kendall as administrator (the land being restricted Indian land, it descended directly to the heirs and could not and did not pass into the hands of the administrator of the estate of George Redeagle, so that Kendall as administrator was an unnecessary and an improper party).

The United States Circuit Court of Appeals because of the verbal statements of counsel that the stipulation had been unfairly procured, referred the case back to the trial court with di-

rections to investigate the circumstances of the stipulation for dismissal of the suit filed in said court under date of July 17th, 1918, and to report back to the Circuit Court of Appeals "whether in fact and in law said stipulation is a final settlement of the case" (Rec. 200).

Appellee's motion to dismiss appears on pages 211-212 of the record. Order of reference of the Circuit Court of Appeals (Record 215).

Judge Robert L. Williams of the Eastern District of Oklahoma, heard the evidence and reported back to the United States Circuit Court of Appeals as follows (Rec. 218):

"I find that George Redeagle understood the nature of the instrument and its contents and knew what he was doing and executed the same of his own free will and voluntary act and deed for the purposes of settling said litigation and by executing the same he intended to abandon the appeal in said cause and release all claim to the land in controversy in said action. \* \* \*

"I find as a matter of fact and as a conclusion of law that said stipulation is valid, and in fact and in law is a final settlement of the issues involved in the above styled case."

The appellee and defendant, Ewert, thereupon renewed his motion to dismiss the appeal and the Circuit Court of Appeals under date of March 1, 1920 (Rec. 357), entered its decree as follows:

"This cause came on to be heard on the transcripts of the records from the District Court of the United States for the Eastern District of Oklahoma, the motion of the appellee to dismiss the appeal, the findings and conclusions of said District Court under the order of reference of this court, etc., and the exceptions of appellants, and was argued by counsel.

"Upon consideration of the motion of the appellee to dismiss the appeal in this cause on the ground that this case was compromised and settled by the agreement of the parties before the appeal was taken, and upon a consideration of the finding of the Honorable R. L. Williams, United States District Judge, that the stipulation of compromise and settlement on which the motion is founded was valid 'and in fact and in law is a final settlement of the issues involved in the suit, and upon a reading and consideration of the evidence on which that finding is based and the arguments and briefs of counsel.

"It is hereby, ordered, adjudged and decreed that the appeal in this cause be, and it is hereby, dismissed with costs; and that Paul A. Ewert have and recover against John S. Kendall, Administrator of the Estate of George Redeagle, deceased, and Josephine Abrams, LeRoy Redeagle and Doane Redagle, children and heirs at law, in the place and stead of George Redeagle, deceased, the sum of twenty dollars for his costs herein, to be collected according to law."

Appellants filed a petition for re-hearing and it was denied (Rec. 358).

Contrary to the suggestion of Judge Walter H. Sanborn of the United States Circuit Court of Appeals that no appeal did lie to the Supreme Court of the United States from this order, counsel for the appellants went to the newly appointed Circuit Judge, Kimbrough Stone, and as a matter of form Judge Kimbrough Stone granted the appeal. The appeal is not on the merits of the question but upon the granting of the motion of the appellee, Ewert, to dismiss the appeal in the Circuit Court of Appeals because of the making of the stipulation for dismissal by plaintiff and defendant. The case is not in this court on its merits, never having been considered by the United States Circuit Court of Appeals.

In March, 1921, the appellee filed a motion to dismiss the appeal in the Supreme Court of the United States. This court apparently laboring under the misapprehension that the main case was pending in the United States Supreme Court on its merits, directed that the hearing of that motion to dismiss should be postponed until the case was presented on its merits in due form.

Appellee now presents this new motion to dismiss the appeal upon the further ground that all the issues have again been settled and disposed of and that the case has become a moot case.

**BRIEF.**

**Appeal should be dismissed with prejudice because of stipulation entered into by the appellants and appellee to that effect.**

Under date of December 31st, 1921, separate stipulations for dismissal were filed in this court by each of the appellants, Leroy Redeagle, Doane Redeagle and Josephine Redeagle Abrams. They represent the entire estate of George Redeagle, deceased. John S. Kendall as administrator is not now nor has he ever been a proper or necessary party plaintiff in this suit. The lands involved were at the time of the death of George Redeagle, the original plaintiff, restricted Indian lands and descended under the laws of the State of Oklahoma free and clear directly to the heirs and could not and never did become assets in the hands of the administrator. The stipulations so filed by each of said heirs and appellants were identical in form and language and are as follows, to-wit (caption omitted) :

"Comes now Doane S. Redeagle, one of the appellants in the above entitled case, by himself in person, and Paul A. Ewert, appellee, *pro se*, and agree that the said appeal as to the said above named appellant shall be dismissed with prejudice, and is hereby dismissed with prejudice.

"Said appellant, Doane S. Redeagle, further shows to the court that he has on this day made a full and complete settlement with the said appellee, considering that the said Paul A. Ewert purchased the said land involved in this suit at public sale, and that the only question involved is a technical one of his right to receive a conveyance; that there was no fraud connected therewith, and that they are advised that both the Attorney General and Secretary of the Interior of the United States advised the said Paul A. Ewert prior to the approval of said deed that he had a right to purchase the said land and to receive the conveyance. That said above named appellant is further moved to dismiss said action by reason of the fact that his father, George Redeagle, now deceased, in his lifetime settled said case with the said Paul A. Ewert, and that he has repeatedly stated to his counsel that he wished to settle said suit; that he is further moved by the uncertainty of the outcome of said case, and has therefore made on this date a full and complete settlement of said case, as far as his interests are concerned, with the said Paul A. Ewert, for the

consideration of six thousand dollars (\$6,000.00), and has executed and delivered to the said Paul A. Ewert a warranty deed conveying to him his undivided one-third (1/3) interest in and to said lands, the restrictions on said lands having expired on the 26th day of September, A. D., 1921.

Dated this 17th day of December, A. D., 1921.

(Signed) Leroy Redeagle,  
Doane S. Redeagle,  
Josephine Redeagle Abrams,  
Appellants.  
Paul A. Ewert,  
Appellee.

Under date of December 31st, 1921, a Notice of Dismissal of Counsel in said case was filed in this court by each of said appellants. That Notice of Dismissal of Counsel (omitting the caption) is as follows:

"Notice is hereby given that we, the undersigned appellants in the above entitled case, have settled with the appellee the above entitled case for a full, fair and adequate consideration; that we hereby revoke the employment of A. Scott Thompson and H. W. Currey and Leslie J. Lyons, and any and all other persons representing or assuming to represent us as our attorneys in the above entitled matter.

"Notice is hereby given that since the date of the settlement in said matter, to-wit: On the 19th day of November, A. D. 1921, when we made said settlement and advised counsel thereof, we have had no one as our counsel or in our employ representing us in the above matter, and we hereby revoke and set aside all retainers and contracts held by any of such attorneys and notify the Supreme Court of the United States that they no longer represent us in the above proceeding.

"We further represent that we are the sole heirs at law of George Redeagle, deceased; that at the time of the death of the said George Redeagle the lands involved in said suit were restricted Indian lands under the Quapaw Allotment Act, but that said restrictions on said lands have now expired, having so expired under date of September 26th, 1921.

(Signed) Leroy Redeagle,  
Doane S. Redeagle,  
Josephine Redeagle Abrams,  
Appellants."

That under date of December 27th, 1921, each of said appellants by registered letter served upon A. Scott Thompson, Attorney-



at-law, Miami, Oklahoma, a certain letter, a duplicate copy of which is on file with the Clerk of this court and with the Secretary of the Interior of the United States, which said letter is as follows, to-wit:

"December 27th, 1921,

Mr. A. Scott Thompson,  
Attorney-at-Law,  
Miami, Oklahoma,  
Sir:

It has come to the knowledge of each of the undersigned that you have sent a letter and telegram to the Secretary of the Interior and the Commission of Indian Affairs of the United States, at Washington, D. C., asking them not to approve deeds of George Redeagle to Paul A. Ewert, upon the ground that you had a case pending in the Supreme Court of the United States involving the title to that land theretofore deeded to Paul A. Ewert by our father, George Redeagle, now deceased.

"We and each of us have already advised you that you are not our attorneys in this suit, and we have advised you that we have deeded our interest in this land to Paul A. Ewert. At different times you have said something about some kind of an agreement with our father, George Redeagle, concerning this suit, and you have attempted to get us to acquiesce in that agreement for the continuation of that suit. We have never done so. We have never employed you as our attorney and we do not so consider that you are now so employed.

"This letter is to advise you that the undersigned, who are the sole persons interested in the estate of George Redeagle, deceased, have made a settlement with Paul A. Ewert of all our interest in this land. We offered to deed you this land if you would give us what Mr. Ewert offered, through Leroy Redeagle. You refused to do so. We then settled the case with him, and made a deed to our interest in the land.

"This is to advise you that we have advised the Secretary of the Interior and the Commissioner of Indian Affairs and the Supreme Court of the United States that you are not our attorney; that whatever agreement you may have in the matter was an agreement made with our father, George Redeagle, now deceased. We have never ratified or confirmed that agreement, and you are hereby notified that you do not represent us in the case of Leroy Redeagle, Doane S. Redeagle, Josephine Sophia Redeagle Abrams, and John S. Kendall, Administrator of the Estate of George Redeagle, deceased vs. Paul A. Ewert, pending in the Supreme Court of the United States. We have settled this lawsuit, and we have deeded

our interest in this land to Paul A. Ewert for a price very satisfactory to ourselves, and a stipulation dismissing said law suit has been filed in the Supreme Court of the United States.

"If we heirs who own whatever interest there is in this land, have settled with Mr. Ewert and given him a deed to our interest, you have no right to attempt to stop any proceedings relative to making the title to this land good in Mr. Ewert.

(Signed) Sophia Redeagle Abrams,  
Doane S. Redeagle,  
Leroy Redeagle."

The lands involved in this suit are inherited Quapaw Indian lands allotted under and pursuant to the Act of Congress approved March 2, 1895 (28 Stats. at Large, p. 907). The Act provides:

"And the Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith; Provided, *that said allotments shall be inalienable for the period of twenty-five years from and after the date of said patents.*"

Pursuant to said Act of Congress all patents in fee simple to Quapaw Indian allottees were issued under date of September 26, 1896, and the restrictions therefore expired by limitation under date of September 26th, 1921.

The stipulation for dismissal in this case signed by all interested heirs and appellants bears date of December 17th, 1921, and was filed in this court on December 31st, 1921. The restrictions had been expired. The heirs held the land in fee simple as white persons; they had an unconditional and an absolute right to settle the suit. There can be no controversy as to that. The suit should be dismissed.

Former counsel Hiram W. Currey, has for some time since been deceased. Notice of this motion was served upon A. Scott Thompson as former counsel. It may be claimed that the stipulation for dismissal was not signed by John S. Kendall Administrator. This is without merit. The lands in question were inherited Quapaw Indian lands. The restrictions did not expire until September 26th, 1921, at the end of the twenty-five year period.

The petition filed in the United States Circuit Court of Appeals suggesting the death of George Redeagle and asking to have the case revived in the name of the hereinbefore named appellants, and the order of revivor in said case are found on pages 202-203-204 of the transcript of the record. The petition states that George

Redeagle died on the 19th day of November, 1918, and that the sole heirs of the said George Redeagle are Josephine Abrams, age 29, Leroy Redeagle, age 26, and Doane Redeagle, age 23.

Under the provisions of the Allotting Act hereinbefore set forth the lands were restricted Quapaw Indian lands and descended directly to the heirs. No liability for debts of any kind could attach against the land prior to the expiration of the restrictions. John S. Kendall Administrator is therefore an improper party plaintiff and is not interested in the outcome of the suit and has no interest therein and his signature to the stipulation in question is unnecessary.

**The appellee, Ewert, has acquired by deed of warranty title to the lands in question and the questions of law heretofore before the court are now moot questions.**

The restrictions against alienation of the lands in question expired by limitation on September 26th, 1921. Under date of November 19th, 1921, November 21st, 1921, and December 17th, 1921, each of said heirs Leroy Redeagle, Sophia Redeagle Abrams and Doane S. Redeagle respectively, made, executed and delivered to the appellee herein, for a cash consideration of six thousand dollars (\$6000.000) each, or a total consideration of eighteen thousand dollars (\$18,000.00), their deeds of warranty in and to the lands involved in this suit, duplicate copies of which said deeds are herewith submitted and are on file with the clerk of this court. Each of said deeds are identical in form and are in the following language, to-wit:

"Book 93, Page 442.

Warranty Deed.

This indenture, made and entered into this 19th day of November, A. D., 1921, by and between Leroy Redeagle, heir at law of his father, George Redeagle, Widower, deceased, of the County of Ottawa, party of the first part, and Paul A. Ewert, of the County of Jasper, State of Missouri, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of six thousand dollars (\$6,000.00), to him cash in hand paid, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain, Sell and Convey unto the said party of the second part, his heirs and assigns forever, his whole and undivided one-third ( $1/3$ ) interest in and to all of the following described real estate situated in the County of Ottawa, State of Oklahoma, to-wit:

The East Half (E.  $\frac{1}{2}$ ) of the Southeast Quarter (SE.  $\frac{1}{4}$ ) and the East Half (E.  $\frac{1}{2}$ ) of the Southwest Quarter (SW.  $\frac{1}{4}$ ) of the Southeast Quarter (SE.  $\frac{1}{4}$ ) of Section Twenty-one (21), Township Twenty-nine (29), North of Range Twenty-three (23), East of the Indian Meridian,

containing one hundred acres more or less, said lands being lands inherited by the party of the first part from his father, George Redeagle, deceased.

Together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns, forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature, except as to such liens and encumbrances as have heretofore been made upon said lands by the said party of the second part. It being expressly understood and agreed by and between the parties hereto that it is the intent and purpose of this instrument to convey to the said Paul A. Ewert a fee simple title in and to grantor's undivided one-third ( $\frac{1}{3}$ ) interest in and to said premises, and said first party does hereby sell, assign and convey to the said Paul A. Ewert his undivided one-third interest in and to any and all royalties heretofore accruing from the mines upon said land, and does hereby give to said party of the second part all interests which he now claims in said land, or has ever claimed in and to said lands in the form of royalties, rents, profits, etc., either received heretofore by the party of the second part, or such rents and royalties, etc., as have accrued from said lands during the period of occupancy thereof by the party of the second part, and have been paid, impounded or otherwise held or derived from said lands.

Said Grantor further states that the said described lands are not now, nor have they ever been lands used or occupied by him, or his father George Redeagle, now deceased, as a homestead, but are inherited lands, and as such were never used or occupied by the original Indian allottee as a homestead (Book 93, page 443).

Signed, sealed and delivered this 19th day of November, A. D. 1921.

(Signed) Leroy Redeagle. (Seal)

Witnesses:

(Signed) Cora Hallam,

Geo. J. Grayston.

(Six one dollar each U. S. I. R. Stamps duly cancelled.)

*State of Missouri, County of Jasper, ss.***Acknowledgment.**

Before me, George J. Grayston, a Notary Public within and for said County and State, on this 19th day of November, A. D., 1921, personally appeared Leroy Redeagle, to me known to be the identical person who executed the within and foregoing instrument, and who acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal the day and year first above written.

My commission expires August 4, 1923.

(Seal)

(Signed) Geo. J. Grayston,  
Notary Public, Jasper County, Missouri.

Filed for Record Nov 19 1921 5:00 O'clock P. M. John W. Chandler Co. Clk."

**Appeal should also be dismissed because of the approval by the Secretary of the Interior of the United States of the deed made to appellee, Ewert, by George Redeagle, under date of July 5, 1918.**

The sole question before this court in the appeal in this case is whether or not George Redeagle the original plaintiff, could lawfully enter into the stipulation which he made with the appellee, Ewert, under date of July 5, 1918, and filed in the District Court of the United States for the Eastern District of Oklahoma, under date of July 17th, 1918 (Tr. Rec. 186-187), because of the restricted character of the lands. The United States Circuit Court of Appeals held that if Redeagle was authorized to institute the suit there followed the implied authority to dismiss it, and dismissed the appeal.

However, on the same date, to-wit: July 5th, 1918, the said George Redeagle also made, executed and delivered to the defendant, Paul A. Ewert, a certain deed to the lands in question, entitled "Quit Claim Deed Inherited Lands." This deed, a certified copy of which is herewith filed with the clerk of this court, was made, executed and delivered under and pursuant to the provisions of the Act of Congress approved May 27, 1902, Vol. 32, Part 1, page 275, reading as follows:

"Section 7. That the adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon

alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent.  
\* \* \* But all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey full title to the purchaser the same as if a final patent without restrictions upon alienation had been issued to the allottee."

This deed so made, executed and delivered by George Redeagle to the appellee herein was, after the date of its execution, as provided by law, submitted to the Secretary of the Interior of the United States for his approval, and said deed was approved by the Secretary of the Interior of the United States upon the recommendation of the Commissioner of Indian Affairs under date of January 27th, 1922. It was filed for record in the office of the County Clerk or Register of Deeds of Ottawa County, Oklahoma, in which said lands are situated, under date of February 10th, 1922, and there recorded in Book 94, at page 676 of the Records of said office. Said deed, together with the approval thereof by the Secretary of the Interior is in the following language, to-wit:

"Book 94, page 676

(Office of Indian Affairs Received  
Jun 10 1920 49361)

(Office of Indian Affairs Received  
Jul 12 1920 58344)

Quit Claim Indian Deed and Inherited Lands.

This indenture, made and entered into this 5th day of July, one thousand nine hundred and eighteen, by and between George Redeagle, Widower of Ottawa County, State of Oklahoma, one of the heirs of Huldah Quapaw White, Quapaw Allottee Number 2, deceased, a Quapaw Indian, party of the first part, and Paul A. Ewert, of Joplin, Missouri, party of the second part:

Witnesseth, that said party of the first part, for and in consideration of the sum of seven hundred (\$700.00) dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto said party of the second part the following described real estate and premises situated in Ottawa County State of Oklahoma, to-wit:

The East One-half (E.  $\frac{1}{2}$ ) of the Southeast Quarter (SE.  $\frac{1}{4}$ ) and East One-half (E.  $\frac{1}{2}$ ) of the Southwest Quarter (SW.  $\frac{1}{4}$ ) of the Southeast Quarter (SE.  $\frac{1}{4}$ ) of Section Twenty-one (21), Township Twenty-nine (29), Range Twenty-three (23), East of the Indian Meridian,

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators and assigns, forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) George Redeagle

(Seal)

Witnesses:

(Signed) J. C. Ammerman.

I. E. Enyert.

(One dollar canceled U. S. I. R. Stamps.)

Book 94, Page 677

(Acknowledgments must be in accordance with the form prescribed by the State of Territory in which the land is situated.)

*State of Missouri, County of Jasper, ss.*

Be it remembered, that on this 5th day of July, A. D. 1918, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared George Redeagle, Widower, to me personally known to be the identical person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof, I have hereunto subscribed my name and affixed my Notarial Seal on the day and year last above written.

(Seal)

(Signed) Stella De Honey,  
Notary Public, Jasper County, Missouri.

My commission expires March 8, 1919.

Department of the Interior,  
O. N. Office of Indian Affairs.

Jan 27 1922. The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved.

(Signed) Chas. H. Burke, Commissioner.  
E. B. M. M.

Department of the Interior, Jan 27 1922

The within deed is hereby approved.

(Signed) F. M. Goodwin, Assistant Secretary.  
J. S. R.



Office of Indian Affairs, Land Division. Jan 30, 1922.

Recorded in Deed Book, Inherited Indian Lands, Vol. 42, page 228.

334 Quit Claim Warranty Deed.

From George Redeagle, Widower, to Paul A. Ewert.

*State of Oklahoma, Ottawa County, ss.*

This instrument filed for record Feb. 3, 1922, Time 8 A. M. in the office of County Clerk at Miami, Ottawa Co. Oklahoma, and recorded in Book 94, Page 676. John W. Chandler, County Clerk.

By H. E. Mozier, Deputy.

*State of Oklahoma, County of Ottawa, ss.*

I, John W. Chandler, County Clerk of the above named County, do hereby certify that the within and foregoing instrument is a full, true and correct copy of the original instrument which is of record in . . . , Record No. 94, at Page 676, of the records of this office.

Witness my hand and official seal at Miami, Oklahoma, this the 10th day of Feb. 1922.

John W. Chandler, County Clerk,  
By H. E. Mozer, Deputy."

It will be noticed that this deed bears date of July 5th, 1918; that it bears the filing mark of the Office of Indian Affairs as having been submitted for approval on June 10th, 1920, and that it was approved by the Secretary of the Interior of the United States on January 27th, 1922. While the approval is of said last named date, to-wit: January 27th, 1922, it relates back to the date of the deed, to-wit: July 5th, 1918.

*Harris v. Bell*, 254 U. S., 103-109.

It therefore shuts out any possible mesne conveyances made by either George Redeagle or his heirs.

In this connection, the attention of the court is directed to pages 348-349 of the transcript of the record wherein appears the duplicate copy of said deed which was offered in evidence in said case. From that duplicate copy it appears that said deed was filed in the Office of Indian Affairs immediately after its execution and delivery, to-wit: On July, 16, 1918. It bears the stamp of the Indian Office. That duplicate copy of said deed was recorded in the office of the County Clerk or Register of Deeds of Ottawa County, Oklahoma, on December 4, 1918. The deed was not approved at



that time because the department was of the opinion that full and perfect title had been conveyed to Franklin M. Smith by the terms of the original deed from George Redeagle to the said Franklin M. Smith (Tr. Rec. p. 7), the trial court having theretofore held in conformity with the opinion of the Secretary of the Interior and of the Attorney General that Ewert was authorized to receive the conveyance made to his agent, Franklin M. Smith.

### **Speedy Action Necessary and Prayed For.**

It appears from the record that this appellee has now for a third time purchased the land in controversy, the first time upon the prior expressed opinion of the Attorney General and the Secretary of the Interior that he had a lawful right to purchase the land and receive the conveyance, the second time upon the settlement by stipulation and dismissal of said case, and the deed of July 5, 1918, and the third time by the present deeds from all of the heirs acquired at an aggregate cost of eighteen thousand dollars.

It appears from the records that the lands are valuable mining lands. The defendant has been embarrassed, the mines have been tied up and great injustice has been done to the defendant. In an endeavor to extricate himself from financial loss, he has submitted to the payment of this blood money rather than to await the final termination of the case. The case as now docketed does not come to this court on its merits, but is based upon an appeal from the United States Circuit Court of Appeals sustaining appellee's motion to dismiss by reason of the making and filing of the stipulation for dismissal and settlement of said case by George Redeagle immediately after the United States District Court had decided the case in favor of the appellee, Ewert.

This court apparently deferred the motion to dismiss the appeal filed by counsel for the appellee in this case a year ago upon the theory that the present case was pending in the Supreme Court *upon its merits*. This is not true.

Appellee, Paul A. Ewert, most urgently asks this court for speedy relief. In closing, it is not out of the way to say that in the case of *Bluejacket v. Ewert*, 265 Fed., 823, that court held that while the appellee, Ewert, could not lawfully receive a conveyance of the land therein described, which was conveyed directly to Ewert by an Indian under similar circumstances, that the adult heirs were guilty of such laches in the bringing of the suit as to bar them from

maintaining the action. In the case at bar the deed was executed on March 10, 1909. The grantor, George Redeagle, was an adult Indian. He did not institute the suit until May 19th, 1916. Appellee pleads general laches. The pleadings and the proof show that since the purchase the lands have become valuable and innocent purchasers have acquired what should be termed vested rights and have expended great sums of money in improvements upon the land. Portions of it have been sold, bringing the case directly within the rule laid down by the Supreme Court of the United States in the case of

*Felix v. Patrick*, 145 U. S., 317, 331, 332.

and

*Schrimscher v. Stockton*, 183 U. S., 290-296.

the cases relied upon by the Circuit Court of Appeals in its decision in the Bluejacket case holding that the adult plaintiffs were guilty of such laches as to bar them from maintaining their suit.

Respectfully submitted,

HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,

*Attorneys for Appellee.*

*To Arthur Scott Thompson, Esq., Miami, Oklahoma, claiming to have been Attorney of Record for Appellants:*

Please take notice that the foregoing Motion to Dismiss and Brief in support thereof, will be submitted to the Supreme Court of the United States on Monday, the 13th day of March, 1922, or as soon thereafter as counsel can be heard.

HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,

*Attorneys for Appellee.*



MAR 11 1922

WM. R. STANSBURY  
CLERK

No. 157.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1921.

JOHN S. KENDALL, ADMINISTRATOR OF THE  
ESTATE OF GEORGE REDEAGLE, DE-  
CEASED, LEROY REDEAGLE, DOANE S.  
REDEAGLE, AND JOSEPHINE REDEAGLE  
ABRAMS, HEIRS AT LAW OF GEORGE RED-  
EAGLE, DECEASED, APPELLANTS,

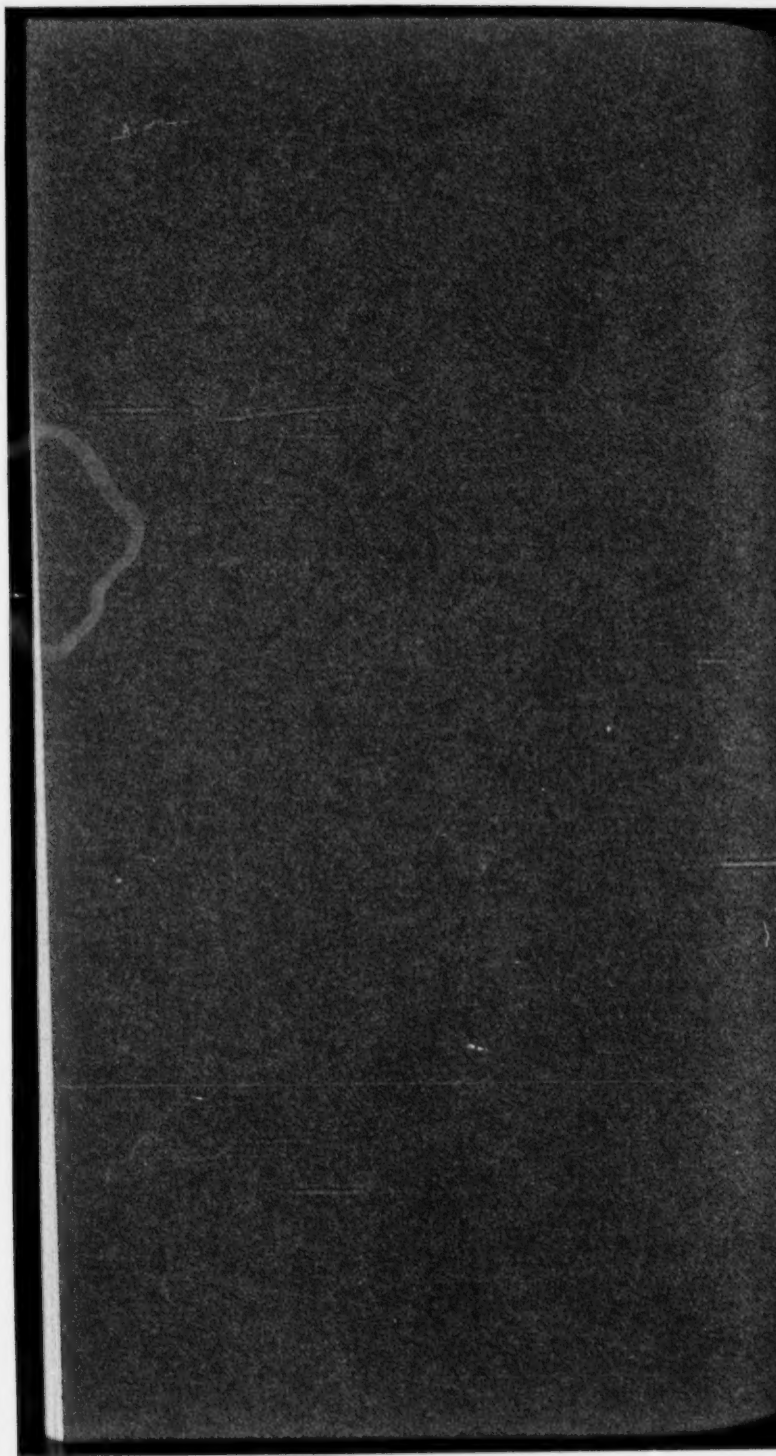
VS.

PAUL A. EWERT, APPELLEE.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT.

**BRIEF IN OPPOSITION TO MOTION TO STRIKE  
FROM THE DOCKET AND DISMISS  
THE APPEAL.**

ARTHUR SCOTT THOMPSON,  
*Attorney for John S. Kendall,  
Administrator of the Estate of  
George Redeagle, Deceased,  
and for Himself and in Behalf  
of the Estate of Hiram W.  
Correy, his former Associate  
Herein.*



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We are cognizant of the fact that counsel for movants are presenting matters that are outside of the record, and that in opposition thereto it is necessary for us to set forth certain questions of fact and concerning records that are not a part of the record in this case; but as to such matters as we call attention to, we would be glad to submit such proof concerning same as the court may direct, and we are contenting ourselves with an oath at the bottom of this brief concerning same, unless the court directs otherwise.

### **Administrator Proper and Necessary Party.**

This case was revived, upon death of plaintiff, in the name of John S. Kendall as administrator of the estate of George Redeagle, and in the name of the heirs. This was proper. The revivor was necessary as to heirs and equally as necessary to the personal representative. Note the prayer of the complaint in this cause (R. 7):

"Wherefore, premises considered, plaintiff prays the court to adjudge and decree that the defendant holds the title to said land so as aforesaid conveyed to him by the said Franklin M. Smith, *in trust for the use and benefit of the plaintiff*; That the defendant be required to account to the plaintiff for the sum of seventeen hundred and fifty dollars received by him upon the mortgage of said land, and for the rental value of said land at Two Hundred Dollars per annum, and that the plaintiff have such other and further general relief as he may be entitled to under the rules and principles of equity and as the court may deem right and just; and the plaintiff now offers to comply with such orders and decrees as the court

may impose upon him, or may adjudge to be right and just, as a condition for the remedy herein prayed for."

It appears from the complaint (Record, p. 6), that appellee had mortgaged this property and secured \$1750 on said mortgage; the mortgagee was innocent and the lien is recognized, but plaintiff prayed for an accounting for the moneys received under this mortgage and for rents received by appellee from these lands. He further prays for general relief which would enable him or his estate to recover the mining royalties amounting to over \$56,000.00 accumulated while this litigation has been pending. The personal representative is the only person that might continue the suit for an accounting for mortgage money, farm rents and royalties on lead and zinc mined on this land. Assuming the land to be restricted at time of the death of George Redeagle, his right to recover the rents and royalties paid to appellee before the death of Redeagle was personal property that passed only to his administrator, and same could be recovered only by suit of his personal representative. This right alone is much more valuable than the fee ownership itself. The royalties on ores mined exceed the value of the land today. Counsel is informed by representatives of the company mining on this land that the royalties on one 40-acre tract alone has amounted to more than \$56,000.00. This sum represents a royalty of 15 per cent of the gross sale receipts of lead and zinc taken from one forty-acre tract alone, or approximately \$373,333.33 worth of ore taken and sold from this land.



Mr. Ewert realizes that a judgment in accounting for these rents and royalties is more serious to him than a loss of the title to the land, and he shrewdly places in his deeds taken recently from the heirs a complete release from claims for rents and royalties. See his brief on this motion, page 13. An examination of the record will disclose that the administrator has furnished appeal cost bond herein and appellee in buying out the heirs and moving dismissal has made no arrangement to care for the costs in this case. Furthermore, the appeal bond given to the District Court by Redeagle himself is to be ignored by appellee and the heirs of Redeagle if this motion prevails. The sureties in these bonds are entitled to and should be protected.

Unquestionably the administrator was a necessary party and revivor in his name was proper and he can and desires to prosecute this appeal.

**Counsel Had Rights Herein That Should Not  
Be Ignored.**

On the 16th day of May, 1916, George Redeagle employed H. W. Currey, an attorney of Joplin, Missouri, recently deceased, and the undersigned counsel, to bring suit against the appellee herein for the purpose of setting aside the deed in question, and asked that the court declare Mr. Ewert to be a trustee, and that an accounting of rents and moneys received under mortgage be had, and for general relief as set forth hereinbefore. This employment was reduced to writing and a copy of the contract is as follows:

## Contract.

This agreement, made and entered into this 16th day of May, 1916, by and between George Redeagle and Julia Redeagle, his wife, as parties of the first part, and H. W. Currey and A. Scott Thompson, as parties of the second part,

Witnesseth, That, Whereas, the said party of the first part, George Redeagle, was the owner of the East Half of the Southeast Quarter, and the East Half of the Southwest Quarter of the Southeast Quarter of Section twenty-one (21) Township Twenty-nine (29) North, Range Twenty-three (23) East of the Indian Meridian, in Ottawa County, Oklahoma, and

Whereas, said party of the first part did execute a deed therefor to one Franklin M. Smith, who afterwards deeded same to Paul A. Ewert, of Joplin, Missouri, and, Whereas, said Paul A. Ewert was at the time of said purchase by said Franklin M. Smith, an officer of the United States Government, and that said party of the first part desires to bring suit to recover his rights in said land,

It is therefore agreed by and between the said parties, as follows: That the parties of the second part agree to furnish all necessary legal services in the prosecution of the suit of the parties of the first part against Paul A. Ewert, to obtain said title to said lands, to a final adjudication;

That the said parties of the first part, in consideration of said agreement, do hereby agree to pay and advance all necessary costs and expenses of said litigation, and as compensation to said parties of the second part, the parties of the first part agree to give to the parties of the second part one-half of all moneys recovered by reason of such suit, less the costs and expenses of said parties of the first part, and further agree to convey unto the said parties of the second part one half of the

lands or any of the benefits derived or recovered by the parties of the second part in said land as a result of such litigation.

George Redeagle,

her

Julia Redeagle (x)

Mark

Parties of the First Part.

I wrote name of Julia Redeagle at her request and she made her mark in my presenc.

George Redeagle.

I saw name of Julia Redeagle and mark made as stated above.

John Campbell,

H. W. Currey &

A. Scott Thompson,

Parties of the Second Part."

While the contract provides that Redeagle should advance necessary costs and expenses of the litigation, and that the compensation of counsel should be reduced equal to the costs and expenses of the case, George Redeagle as well as his heirs after his death, were unable from time to time to advance necessary costs and expenses, and counsel was required to advance same for them as needed. These costs and expenses so advanced by counsel exceed the sum of \$2,000.00.

During the summer of 1918 and the early fall thereof George Redeagle was in one drunken debauch after another, as this record abundantly shows, and was finally destroyed in a fire in a rooming house in Joplin, Missouri, in the winter of the same year. During one of these debauches he married one Marie Tate and after his death this woman claimed to be the lawful widow of

George Redeagle and the record discloses that she sought to have the case revived in her own name in the Circuit Court of Appeals (Record, top paging 205-206), and it will be noted that the proof of service of notice to apply for revivor in the name of Marie Tate Redeagle was sworn to before the appellee herein. Counsel herein, in carrying out the spirit of their contract, made an extensive and expensive investigation as to the claims of this alleged widow, and in behalf of these heirs established the fact before the Commissioner of Indian Affairs that her marriage to George Redeagle was unlawful on account of the fact that Marie Tate had a living husband. By reason of the efforts of counsel for George Redeagle and his estate, the Commissioner of Indian Affairs finally determined that the alleged widow was not a widow in fact of George Redeagle and that she was not entitled to inherit the property of George Redeagle. Without going further into the history of the efforts and work of counsel for the estate of George Redeagle, we call attention of the court to the fact that trial was had in the District Court, and appeal was perfected to the Circuit Court of Appeals, where the matter of settlement was first raised by the appellee, and this collateral matter was referred back to the district judge, and extensive hearings were had; exceptions were filed to the judge's report, arguments were had before the Circuit Court of Appeals upon such exceptions, and the case was fully briefed upon the motion to dismiss and upon the merits of the controversy. After the Circuit Court of Appeals dismissed the appeal, the appeal was lodged

therefrom in this court, and about one year ago a motion similar to that before the court now was filed by appellee, and hearing thereon was deferred until the case was presented on its merits.

We stop here to correct a statement of appellee in his brief upon this motion wherein he states that the matter was never presented on its merits to the Circuit Court of Appeals. We call the court's attention to the record, top paging 356, of order of submission made by the Circuit Court of Appeals, wherein the court, in the last nine words in its order of submission, say: "and the briefs of counsel filed on the merits." This conclusively establishes that the appellee is wrong in his statement that the matter was not submitted to the Circuit Court of Appeals on the merits. We filed brief upon the merits, and the case was argued upon the merits as well as upon the motion to dismiss. The case was argued with a companion case involving the same questions, in *Bluejacket et al. v. Ewert*, now before this court, and being numbered 173.

It is unnecessary to go into detail with this court as to the great amount of work involved in litigation of this character. It is sufficient to say that counsel representing the estate of George Redeagle have performed their part of the contract and no charge of misconduct has ever been made against them or either of them.

Speaking for counsel signed hereto and the estate of Hiram W. Currey, now deceased, we concede that the heirs at law may discharge counsel in consideration of money paid them by appellee, but we have faith

enough in this court to believe it will not lend its aid to such dishonorable conduct toward and treatment of a member of the bar of this court when no misconduct whatever is charged against counsel. Counsel for these appellants and their intestate have worked unceasingly for more than five years in their behalf and at all times until recently with their full cooperation; they have pushed the case to the point where the goal is in sight; then, appellee takes advantage of the necessity and weakness of the Indian heirs for immediate money and they throw over their counsel, against whom they make no charge of disloyalty whatever, for \$18,000.00. They are not content with selling out and deserting their counsel, who has made the settlement possible and who has advanced them and for them large sums of money to protect their rights in this litigation, but sign a letter (appellee's brief, pp. 10-11), addressed to counsel, attempting to intimidate counsel. We are not charging all this to the heirs, for we are convinced that such was a part of the consideration for the payment of the money. Mrs. Josephine Abrams, one of the heirs, told the writer of this brief a short time before the settlement with appellee, that he had offered them \$6,000.00 cash each, and a further sum of \$500.00 if they would help him finally dispose of the matter. When this settlement was made Doane Redeagle and LeRoy Redeagle were living in Miami, Oklahoma (the home of their counsel); LeRoy Redeagle owned a pool room business; and, although they were constantly being besieged by appellee for settlement and they were almost daily in consulta-

tion with the undersigned counsel, *since* they sold out their lawyer they have never spoken to or called on their counsel once and so far as counsel is advised have never been in this vicinity. Their whereabouts today are unknown to counsel. None of them have offered to repay any moneys advanced by counsel as costs in this case or any compensation whatever. They have contented themselves with signing letters and orders of dismissal prepared by appellee. No doubt they are doing as they bargained to do with appellee.

There is one truthful statement in the letter found on page 10 of appellee's brief, and that is:

"We offered to deed you this land if you would give us what Mr. Ewert offered, through LeRoy Redeagle."

That is true. These heirs, each one of them, numerous times in discussing settlements of the case with their counsel, stated they recognized that 50 per cent of the amount received came to counsel, and when they, through the efforts of their counsel, were offered \$18,000. they brazenly offered their counsel the deeds (which he did not want) for \$18000 (which he was not able to pay); when they in good conscience knew if they sold to Mr. Ewert they were entitled to retain only \$9,000.00. They would in fact charge counsel twice as much as they should receive by selling to their adversary.

The attempt of appellee to buy these heirs had been going on for months before it was accomplished, and at one time appellee solicited the aid of counsel writing

this brief and made an offer of settlement in writing to counsel for \$12,000.00, and counsel refused to recommend it to the heirs, and up to that point the heirs were loyal. Negotiations were active when appellant conceived the idea of going around counsel as he did before with their father. See letters of appellee to George Redeagle when he secured deed from him, record top paging 336 to 346. One cannot read these letters without concluding the purpose was to poison the mind of Redeagle, long weakened by use of excessive intoxicants and peyote drug, against his counsel, and take advantage of him.

The appellee has written this counsel since securing deeds from the heirs threatening him if he proceeds further in this case or opposes dismissal of the suit. This record shows that George Redeagle, after appellee secured the deed from him after trial in the District Court (deed shown his brief, page 15), repudiated it and thereafter personally signed the appeal bond and surety was obtained by counsel for him. Appellee and these heirs would by their method of barter throw all these costs on innocent sureties because of the insolvency of these heirs unless the administrator is permitted to prosecute this suit.

What are the rights of counsel outside of his duty to represent the administrator?

We contend that the contract of employment hereinbefore set forth gives the right to go forward with this litigation and be protected in the vested right to earn the compensation.



A parallel question was involved in the recent case of *Kellogg v. Winchell et al.*, 273 Fed. 745.

There the attorney had a contract for a contingent fee of 50% of recovery and pending appeal he was discharged by his client. The Circuit Court of Appeals in discussing the matter recognizes the right of the client to discharge the attorney and substitute counsel with the permission of the court, and say at page 746:

"Where an attorney is dismissed for misconduct, the permission is usually granted as a matter of course; but where, as in the present case, no charge of that kind is made against him, the court may, in its discretion, impose such conditions upon the client as will protect the attorney's interest, especially where his services were to be compensated for only by a percentage of a fund to be created through his efforts. *Kappler v. Sumpter*, 33 App. D. C. 404; *In re Dunn*, 205 N. Y. 398, 98 N. E. 914, Ann. Cas. 1913E, 536; *Yuengling v. Betz*, 58 App. Div. 8, 68 N. Y. Supp. 574; *New York Phonograph Co. v. Edison Phonograph Co.* (C. C.), 150 Fed. 233; *Du Bois v. New York*, 134 Fed. 570, 69 C. C. A. 112; *In re Herman* (D. C.), 50 Fed. 517; *Wilkinson v. Tilden*, *supra*; *Curtis v. Richards*, *supra*; *Silverman v. Pennsylvania Railroad Co.* (C. C.), 141 Fed. 382; *Ronald v. Mutual Reserve Fund Life Ass'n* (C. C.), 30 Fed. 228.

In *Kappler v. Sumpter*, *supra*, we said:

'Where it is possible, under the circumstances of a particular case, to protect the former counsel by imposing some condition for that purpose, it seems that courts usually exercise their discretion to do so.'

Circuit Judge Wallace, in the Wilkinson case, *supra* ruled that where a litigant seeks to dismiss his attorney—

'the court will hold the client to fair dealing, and will refuse its assistance to any attempt to take an unfair advantage of one of its officers. In this behalf courts have frequently and usually required the client to discharge the attorney's claims for services in the suit as a condition of substitution. \* \* \* Ordinarily when there is an agreement that the attorney shall get his fees out of the fund in suit, there is an implied condition that he is to be continued in charge until an available fund is realized.' "

Again, pages 747-748 :

"In the recent case of *Barnes v. Alexander*, 232 U. S. 117, 34 Sup. Ct. 276, 58 L. Ed. 530, the court held that an attorney, acting under a contingent fee contract, had a lien upon the fund created through his effort, and intimated that the lien attached to the right vested in the attorney 'to earn a fee contingent upon success.' The trend of the modern decisions of the court is to protect the right of the attorney to receive compensation for his services. *Ingersoll v. Coram*, 211 U. S. 335, 365-368, 29 Sup. Ct. 92, 53 L. Ed. 208; *McGowan v. Parish*, 237 U. S. 285, 35 Sup. Ct. 543, 59 L. Ed. 955.

Fletcher by his return to the rule shows that he has performed much service under the contract, for which he is entitled to compensation. It was undoubtedly the intention of the parties that he should be permitted to prosecute the case to a final determination. Only by this means could he earn the fees contemplated by the contract. While there are no words of grant in the contract, it is a 'principle even of the common law that words of covenant may be construed as a grant when they con-

cern a present right.' *Barnes v. Alexander, supra*, 232 U. S. 121, 34 Sup. Ct. 276, 58 L. Ed. 530; *Sharington v. Strotton, Plowden*, 298, 308; *Hogan v. Barry*, 143 Mass. 538, 10 N. E. 253; *Ladd v. Boston*, 151 Mass. 585, 588, 24 N. E. 858, 21 Am. St. Rep. 481. Fletcher was given a present right 'to try to earn a fee contingent upon success.' *Barnes v. Alexander, supra*. Hence he was vested with an interest in the cause of action. *Gulf, Colorado & Santa Fe Railway Co. v. Miller*, 21 Tex. Civ. App. 609, 53 S. W. 709. Having this interest, he may, in accordance with the principle announced in *Sullivan v. Tobin*, 42 App. D. C. 430, intervene in the suit to protect it.

This is a proceeding in equity, where forms may be disregarded. He may, therefore, if he desires, prosecute the appeal, the same as if he had formally intervened, for the purpose of having his interest in the litigation determined. Whatever he does, however, must be done on his own account, for he has no longer any right to represent Kellogg. That right was terminated by the latter's letter revoking his authority. *Wilkinson v. Tilden, supra*; *Kappler v. Sumpter*, 33 App. D. C. 404. To say that Kellogg had a right to put an end to his authority to represent him is quite different from saying that the court is not required to aid Kellogg in doing so. The brief filed on behalf of Kellogg may be considered from now on as Fletcher's brief."

This case, with the authorities cited therein, supports the right of counsel here to proceed in their own right, even though the court should hold this case is not properly revived in the name of the administrator.

This court, in *Ingersoll v. Coram*, 211 U. S. 335, recognizes the right of an attorney, as here, as being an

equitable lien on the property involved, and say (page 368):

"In *Wylie v. Cox*, 15 How. 415, a contract was made with an attorney for the prosecution of a claim against Mexico to pay him a contingent fee of five per cent out of the fund awarded. It was held that the agreement constituted a lien upon the fund. In *In re Paschal*, 10 Wall. 483, in the letter retaining Paschal it was said that his compensation would depend upon the action of a future Legislature, 'unless a recovery is had in the suit, in which event I shall feel authorized to let you retain it out of the amount received.' It was held that in accordance with the prevailing rule in this country Paschal had a lien on the fund in his hands for disbursement and professional fees. The case was cited in *McPherson v. Cox*, 96 U. S. 404, 417, and the doctrine repeated. See also *Central Railroad v. Pettus*, 113 U. S. 116; *Louisville &c. Railroad Company v. Wilson*, 138 U. S. 501, 507. In *Walker v. Brown*, 165 U. S. 654, it was held that every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligations, creates an *equitable lien on the property so indicated*."

This court, as far back as *In re Paschal*, 10 Wallace, 483, have preserved the rights of attorneys who have honestly and conscientiously performed services for their clients that prove to be disloyal, and at page 494 say:

"The fee bill adopted by Congress in 1853 recognizes this general rule and, in fact, adopts it.

By the first section of that act it is expressly declared, that nothing therein shall be construed to prohibit attorneys, solicitors, and proctors from charging to, and receiving from, their clients, other than the government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective states, or may be agreed upon between the parties."

And speaking concerning the condition in New York State, say (page 495):

"The Code has since abolished the fee bill, and left attorneys and solicitors to make their own bargains with their clients. But the courts have held that this change has not affected the attorney's lien, even on the judgment recovered, for the amount which it has been agreed he shall receive. In one case he was to receive one-half the amount to be recovered. Judgment was obtained for \$1179, and the court held that the attorney had a lien on this judgment for his half of it, and that the defendant could not safely settle with the plaintiff without paying him."

The New York case referred to in the last quotation is *Rooney v. Second Avenue Railroad Co.*, 18 N. Y. 368, and there the court say (page 369):

"To that extent the attorney was regarded as the equitable assignee of the judgment. It was said by Lord Kenyon, in *Read v. Dupper* (6 Term R., 361), that it had been settled long ago, that a party should not run away with the fruits of the cause without satisfying the legal demands of his attorney, by whose industry and expense those fruits were obtained (*Martin v. Hawks*, 15 John.,

405, and cases there cited; *Wilkins v. Batterman*, 4 Barb. 47; *Sweet v. Bartlett*, 4 Sand. 661; 2 Kent's Com. 641)."

And pp. 370-371:

"The lien of the attorney, upon the judgment he recovers, is unaffected by the change. That right stands now as it did before. It is a valid and established right to receive, out of the moneys to be collected upon the judgment, the amount due him from his client for his services and expenses in obtaining it. In the absence of any agreement on the subject, I suppose the sum recovered by the party as an indemnity for his expenses would be the measure of compensation allowed to the attorney. This, then, would be the extent of his lien. But where there has been an agreement for more or less than that sum, the amount which, by agreement, he is entitled to receive will determine the extent of his lien. It is still true, that the attorney is to be regarded as the equitable assignee of the judgment to the extent of his claim for services in the action (*Sherwood v. The Buffalo and New York City Railroad Company*, 12 How. 136; *Haight v. Holcomb*, 16 *id.*, 160, 173)."

It might be urged that our contract providing for a contingent fee of 50% is unconscionable. It is not so. The Legislature of the State of Oklahoma has said otherwise. Revised Statutes of Oklahoma 1910, Section 248, reads:

"Contingent fee may be contracted for. It shall be lawful for an attorney to contract for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed fifty per centum of the net amount of such judgment as may be recovered, or such compromise as may

be made, whether the same arises *ex contractu* or *ex delicto*, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in this chapter."

**Appellee says he had consent of the attorney general and secretary of the interior to purchase this land while acting as assistant attorney general.**

We insist this is not true, and the record conclusively disproves the statement. He did not buy in his own name, but admits the purchase in Smith's name was his. The record, page 9, shows the Redeagle deed was approved by the Secretary of the Interior on April 30, 1909. The deed from the Bluejackets (involved in *Bluejacket v. Ewert*, No. 173, in this court) to Ewert was approved by the Secretary on July 26, 1909, after considerable correspondence between the Attorney General and the Department of the Interior about the propriety of permitting Mr. Ewert to retain his purchase with the Bluejackets (See Record this case, pages 39-59). The Bluejacket deed followed the Redeagle deed in the Department. Note the statement of Secretary Fisher in his letter on page 42 of the record. It is:

"There has been *no sale* to Mr. Ewert of any Indian land other than the Charles Bluejacket allotment, of which this Department is aware. \*

\* \*"

Also note the letters of Mr. Ewert himself (R. pages 55-56), wherein he specifically refers to the purchase by Smith, but does not disclose that he was the real

purchaser. One cannot read this correspondence and not conclude that he kept the Redeagle-Smith purchase under cover from the Department and never disclosed that he was the real purchaser.

But even if he had dealt with full knowledge and consent of the Attorney General and the Secretary of the Interior, wherein does that help the situation? The same contention was made to this court in *Prosser v. Finn*, 208 U. S. 67, and this court in no uncertain language rejected the contention (See our Brief on Merits for other authorities, pages 18-38).

This suggestion of appellee about the knowledge of these Government officials is no doubt on par with his statement in brief, at page 7, about Mr. Justice Sanborn. The appeal papers were submitted to Mr. Justice Stone because he could be conveniently reached at Kansas City, Mo., and were never submitted to Justice Sanborn. He may have made such a suggestion, but it was never made to counsel for appellants and it was never before him, and our knowledge of Justice Sanborn does not lead us to believe that he is given to talk about cases in his court except when they are regularly presented to him.

**What effect have the deeds and settlements obtained by appellee?**

Appellee in his brief asserts that this court was laboring under a mistaken impression when it failed to sustain his former motion to dismiss. He is in error. The appellants therein argued in opposition to the mo-



tion that the original purchase by appellee was void because it was prohibited by statute of the United States, was against public policy and therefore an illegal act. Being so, any compromise, settlement or attempt to ratify likewise carried the taint of illegality of the original purchase and would also be void. This being true, an examination by this court as to the legality of the original transaction became necessary, and its action in postponing the hearing of the motion until the merits were presented is consistent and in line with our contentions made in our brief.

Counsel, following the suggestion of this court, have prepared and filed with the clerk of this court their brief presenting our argument with exhaustive authorities sustaining this contention, and appellee has filed no brief in opposition thereto.

We respectfully request the court to relieve us of the necessity and expense of reprinting such argument. We refer the court to the discussion in our brief on the whole case under the following headings:

#### I.

The transaction by which appellee, Ewert, through his agent, Smith, obtained the Redeagle deed, was a nullity, void and an unlawful act.

(Our Brief, pages 18-38.)

#### II.

The original transaction being void, the lands remained restricted, and no statute of limitation or doctrine of laches is applicable thereto.

(Our Brief, pages 38-53.)

## III.

The original transaction being void and unlawful, the compromise stipulation or ratification is likewise void and ineffective.

(Our Brief, pages 53-63.)

We also refer the court to our brief heretofore filed in opposition to first motion to dismiss.

Appellee now presents additional deeds in an attempt to sustain and ratify his alleged title unlawfully obtained, and in his motion and brief boldly admits and concedes that his original purchase was void. He says:

(p. 5) "At the same time (July 5, 1918) the said George Redeagle made, executed and delivered to Paul A. Ewert, for an adequate consideration, a deed to said lands, subject to the approval of the Secretary of the Interior of the United States in the manner provided by law."

Why submit the deed to the Secretary of the Interior if he had lawfully purchased the land theretofore? He did submit it to the Commissioner of Indian Affairs as he afterwards sets forth in his brief, and of this we will speak later. He could submit it to the Secretary only on the theory the lands were restricted and his original purchase void.

Again he says in his brief (his Brief, page 5), referring to the revivor:

"The land being restricted Indian land, it descended directly to the heirs." (This was in November, 1918.)

Again:

(His Brief, p. 8) "*The lands involved were at the time of the death of George Redeagle, the original plaintiff, restricted Indian lands. \* \**" (Redeagle died November 19, 1918, R. top page 202.)

Again:

(His Brief, p. 11) "And the restrictions therefore expired by limitation under date of September 26, 1921."

"The restrictions *did not* expire until September 26, 1921, at the end of the twenty-five year period."

There are other admissions in this brief of appellee clearly establishing the fact that he now admits his purchase was unlawful and void; that his possession and occupancy of this Indian restricted land for the last thirteen years has been unlawful and unauthorized. He now presents a series of deeds to confirm his unlawful transaction, possession, and the taking of large sums in rents and royalties from this land. Courts of equity will not lend their aid to the furtherance of such conduct. See our authorities in other brief referred to above.

### **Second Redeagle Deed.**

Appellee relies on his second deed from George Redeagle dated July 5, 1918, and approved by the Secretary of the Interior January 27, 1922. This deed is a part of the transaction wherein appellee attempted to settle with Redeagle for \$700.00. Redeagle, after the deed was taken, repudiated the transaction, protested the approval of the deed and perfected his appeal by giving

bond. One of the issues upon the motion to dismiss is the question of whether this old full blood Indian was defrauded in that transaction. And at that time the Acting Commissioner of Indian Affairs returned the deed because the Department of Indian Affairs had no jurisdiction. We quote a certified copy of a letter setting forth this fact.

“(Copy)

Aug. 20, 1918.

Land-Sales.

59363-18

8/20/18

Mr. Paul A. Ewert,  
Attorney at Law,  
Frisco Building,  
Joplin, Missouri.

Office of Indian Affairs  
Received  
Jul 12 1920  
O R

My dear Mr. Ewert:

Your letter of July 16, 1918, inclosing a deed from George Redeagle to you, covering the E/2 of SE/4 and the E/2 of SW/4 of SE/4 of Sec. 21, T. 29 N., R. 23 East, in Okla. has been carefully considered.

It is the opinion of this Office that the Government terminated its jurisdiction over this land by approval of a former deed made by George Redeagle to Franklin M. Smith and approved April 30, 1909.

In view of the approval of the former deed, and also of a quitclaim deed from Grace Redeagle, the only other heir to the land, on May 21, 1913, and without prejudice in any way to your title, the deed is returned herewith. No action has been taken looking to approval or disapproval.

Very truly yours,

(Sgd.) E. B. Meritt,

Assistant Commissioner.

FWH 8-15.

Action approved:

(Sgd.) S. G. Hopkins,

Assistant Secretary.”

"Department of the Interior  
Office of Indian Affairs

Washington, Mar-3 1922. 19..

I, E. B. Meritt, Assistant Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

E. B. Meritt,  
Assistant Commissioner."

Now after the restrictions against alienation have expired an approval is attached and counsel cite *Harris v. Bell*, 254 U. S. 103-109 as authority for the approval. We assert that a casual reading of this case quickly distinguishes this case. In this case the restriction was yet on the land, the deed was given, and before its approval, authority was given certain probate courts to give approval to deeds of Indians of that class. The court in construing the act holds that it was not the intention to confer authority on the probate courts to approve deeds made before the grant of authority and that as to such deeds the rights of approval remained with the Secretary. This is not holding that long after all restrictions have expired as fixed by law the Department has any jurisdiction to act in the matter. We think the approval of January 27, 1922, adds nothing to the deed and the approval was without authority of law. Even if the Department had authority to do as it did it would not be effective if legal rights had intervened.

The real estate records of Ottawa County, Oklahoma, where this land is situated contain a deed made by one of these heirs, Doane Redeagle, conveying his undivided one-third interest to one J. H. Cowell and the revenue stamps thereon indicate a consideration of \$4000.00. The deed was made October 17, 1921, and recorded in Book 93 at page 480 on November 23, 1921. This was after the restrictions had expired and before he had deeded to other parties and long before the Secretary's pretended approval on January 27, 1922. We set forth the deed:

"Book 93 page 480  
Warranty Deed.

Form No. 00

*Know All Men by These Presents:*

That Doane Redeagle, a single man party of the first part, in consideration of the sum of One Dollar (1) and other valueable considerations the receipt of which is hereby acknowledged, does by these presented, grant, bargain, sell and convey unto J. H. Cowell party of the second part his heirs and assigns, all of the following described real property and premises situated in Ottawa County, State of Oklahoma, to-wit:

An undivided one-third ( $1/3$ ) interest in and to the East Half ( $1/2$ ) of the Southeast Quarter ( $1/4$ ) and the East Half ( $1/2$ ) of the Southwest Quarter ( $1/4$ ) of the Southeast Quarter ( $1/4$ ) of Section Twenty-one (21), Township Twenty-nine (29) North of Range Twenty-three (23) East of the Indian Meridian. The first party also conveys hereby his undivided one-third interest in and to all moneys, rents, royalties or damages that he may be entitled to receive or collect concerning the use or occupation of the lands herein described from any person or persons whatsoever, whether the

same has accrued or may hereafter accrue and whether or not action to collect same has been commenced.

Together with all the improvements thereon, and the appurtenances thereto belonging, and warrant the title to the same.

To have and to hold the same together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever.

Party of the first part, for his heirs, executors, and administrators, does hereby covenant, warrant, promise and agree to and with said party of the second part, that at the time of the delivery of these presents, he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind whatsoever, except and that he will warrant and forever defend the same unto said party of the second part, his heirs and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever lawfully claiming or to claim the same.

In witness whereof, the said party of the first part has hereunto set his hand this 17th day of October A. D. 1921.

Doane Redeagle

Revenue stamps \$4.00

*"State of Oklahoma, County of Ottawa, ss.*

I, John W. Chandler, County Clerk of the above named county, do hereby certify that the within and foregoing instrument is a full, true and complete copy of the original instrument which is

of record in Record No. 93 at page 480 of the records of this office.

Witness my hand and official seal at Miami, Oklahoma, this the 6th day of March, 1922.

John W. Chandler, County Clerk.  
By H. E. Mozer, Deputy."

"Book 93 page 481

Acknowledgment.

*State of Oklahoma, County of Ottawa, ss.*

Before me, Ray McNaughton, Notary Public in and for said County and State, on this 17th day of October 1921, personally appeared Doane Redeagle to me well known to be the identical person who executed the within and foregoing instrument and he acknowledged that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth and said Doane Redeagle acknowledged to me that he was single and unmarried.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

(Seal)

Ray McNaughton,  
Notary Public.

My commission expires November 26, 1921."

"3232 Warranty Deed from ..... to  
..... State of Oklahoma,  
County of ....., ss.

This instrument was filed for record on the  
.... day of ....., 19..., at .... o'clock ....  
minutes .. M., in the office of the Register of  
deeds, at ....., Oklahoma, and recorded in  
Book .... at page .....

.....  
Register of Deeds.



*State of Oklahoma, County of Ottawa, ss.*

This instrument filed for record Nov 23, 1921  
Time 8 A M In the office of County Clerk at Mi-  
ami, Ottawa Co. Oklahoma, and recorded in Book  
..... page .....

John W. Chandler, County Clerk.  
By H. E. Mozer, Deputy."

*"State of Oklahoma, County of Ottawa, ss.*

I, John W. Chandler, County Clerk of the  
above named County, do hereby certify that the  
within and foregoing instrument is a full, true and  
complete copy of the original instrument which is  
of record in Record No. 93 at page 481, of the rec-  
ords of this office.

Witness my hand and official seal at Miami,  
Oklahoma, this the 6th day of March, 1922.

John W. Chandler, County Clerk.  
(Seal) By H. E. Mozer, Deputy."

The appellee speaks of vested interests. There are  
none unless it is that set forth in this deed. Those min-  
ing this land have never had cause to fear the appellants.

### **Conclusion.**

In conclusion we urge upon the court:

1. That the administrator is a necessary party and  
the cause should proceed.
2. That counsel should be permitted to go ahead  
to protect their rights based on their con-  
tracts.
3. That the various deeds submitted by appellee  
are ineffective because they are each tainted  
with the vice of illegality present in the orig-  
inal transaction.

4. That by his admission in brief he confesses the original transaction was void and his possession and collection of rents and royalties have been unlawful.
5. That the Secretary's approval of January 27, 1922, was without authority of law and in any event could not supersede the rights given in deed by Doane Redeagle as set forth herein.
6. That it would be unjust and inequitable to permit this cause to be dismissed and throw costs on innocent sureties in this fashion.

And that the motion should be denied.

Respectfully submitted,

ARTHUR SCOTT THOMPSON,  
*Attorney for John S. Kendall, Administrator of the Estate of George Redeagle, Appellant, and for himself and in behalf of the Estate of his former associate, Hiram W. Currey, now deceased.*

*State of Oklahoma, County of Ottawa, ss.*

Arthur Scott Thompson, being first duly sworn, on his oath says: That he is attorney of record for the administrator appellant in the above mentioned case; that the matters and things set forth in this brief outside of the record are true, except as to such matters as he states are upon information and belief, and as to such matters he believes they are true.

Arthur Scott Thompson.

Subscribed and sworn to before me this 6th day of March, 1922.

(Seal)

A. G. Croninger, Notary Public.

My commission expires 10-29-1925.



MAR 13 1922

WM. R. STANSBURY

CLERK

No. 157.

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1921.

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JOHN S. KENDALL, ADMINISTRATOR OF THE  
ESTATE OF GEORGE REDEAGLE, DE-  
CEASED; LEROY REDEAGLE, DOANE S.  
REDEAGLE, AND JOSEPHINE REDEAGLE  
ABRAMS, HEIRS AT LAW OF GEORGE RED-  
EAGLE, DECEASED.

Appellants,

vs.

PAUL A. EWERT,

Appellee.

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ON APPEAL FROM THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT GRANTING MOTION TO  
DISMISS APPEAL.

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REPLY BRIEF

ON MOTION TO STRIKE FROM THE DOCKET  
AND DISMISS THE APPEAL.

---

HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,  
*Attorneys for Appellee.*



No. 157.

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1921.

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JOHN S. KENDALL, ADMINISTRATOR OF THE  
ESTATE OF GEORGE REDEAGLE, DE-  
CEASED; LEROY REDEAGLE, DOANE S.  
REDEAGLE, AND JOSEPHINE REDEAGLE  
ABRAMS, HEIRS AT LAW OF GEORGE RED-  
EAGLE, DECEASED,

Appellants,

vs.

PAUL A. EWERT,  
Appellee.

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ON APPEAL FROM THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT GRANTING MOTION TO  
DISMISS APPEAL.

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**REPLY BRIEF**

The motion in this case is submitted on proper notice to opposing counsel for Monday, March 13, 1922. Appellee timely served his brief and motion, but the Appellant has only this 13th day of March filed with this Court an answer brief, a copy of which was served upon the Appellee Ewert at Joplin, Missouri, just as he was catching the train for Washington. Appellee

arrived in Washington at two o'clock on Sunday, and is now writing this reply brief, which he considers absolutely necessary for the information of this Court, with a view of printing it and filing it on Monday before the case is submitted. Counsel for Appellants have so grossly misstated the facts and the law that no other course will do than to file this brief directing the attention of this Court to these misleading statements and wilful endeavors to mislead this Court.

On page 8 of their answer brief counsel for the Appellants again makes the statement that this case is before this Court on its merits. This is untrue, as counsel well knows. The record discloses that this case is here on an appeal from the judgment of the Court of Appeals for the Eighth Circuit granting Appellee's motion to dismiss the appeal upon the ground that the original plaintiff and the defendant had by stipulation prior to the taking of the appeal from the trial court settled the controversy and dismissed the case. Appellee's motion appears in full on page 199 of the record in this case. Appellant there by his counsel claimed irregularities in procuring the stipulation. The Court of Appeals by an order of reference directed the trial court to examine the matter and report back. The order of reference appears on page 200. The proceedings had in the lower court appear on pages 217 to 356, inclusive.

The order of submission made by the Court of Appeals appears at the bottom of page 356 of the record. This order of submission expressly recites that the case came on to be heard "upon the notice and motion of the Appellee to dismiss the appeal herein, which is renewed after hearing on his former motion to dismiss resulted in the reference of this cause back to the said

district court. This motion to dismiss the appeal as renewed appears on pages 211-216, inclusive, of the Record.

The decree from which Appellant's appeal is found on page 356, and expressly recites that the cause came on to be heard on the motion of the Appellee to dismiss the appeal. A reading of the above pages of the record absolutely disposes of that question and should put this Court right in the matter and show to it that it was in error a year ago in directing that a motion to dismiss the appeal then made on other grounds, should await the hearing of the main case upon its merits. *This case is not here on its merits.*

#### ADMINISTRATOR IS NOT A PROPER OR NECESSARY PARTY.

Appellee has filed with this Court a stipulation for dismissal signed by all of the heirs of the original plaintiff, George Redeagle, now deceased. Counsel on the other side, however, contend that John Kendall, the administrator, has not signed the stipulation for dismissal and that he is in fact a necessary party. This is not the law. The lands involved in this suit, as stated in our original motion, were at the time the suit was instituted by the plaintiff and at the time of the plaintiff's death, restricted inherited Indian lands, inalienable for the period of twenty-five years, ending September 26, 1921. It is true that John Kendall was made a party by the order of revivor but he is neither a proper or necessary party plaintiff. The lands at the time of the death of George Redeagle, the plaintiff, were still restricted Indian lands and descended directly to the surviving heirs, free and clear of any debts or claims or contracts of any kind. The lands could not



become assets in the hands of the administrator for the reasons above named. But counsel for Appellants argue that the rents and profits in the form of royalties and general rent money descended and became assets in the hands of the administrator. This is untrue. The Supreme Court expressly held in the case of *United States vs. Noble, Scott Thompson, et al.*, 235 U. S., that royalties and rents accrued from restricted Indian lands were not the subject of barter or sale and could not be transferred in any manner, lawfully. It stands to reason that such must be the case, for it was the very purpose of Congress to protect these Indian allottees in the right to the usufruct of these lands, thus providing for their continued maintenance and support. The royalties and rents during the period of litigation, whether accumulating before the death of George Redeagle or after, were the absolute property of the heirs and were not the subject of attachment or execution, or effected by contracts of sale. Like the very land itself they could not be used for payment of the debts of George Redeagle. They were the absolute property of the heirs. Neither would the administrator have anything whatever to do with the mortgage money, because that was an incumbrance upon the land itself and the land was restricted.

On page 4 of counsel's brief they refer to the fact that the administrator had furnished a bond on appeal and should be protected. The facts in the case are that attorneys Currey and Thompson of their own will and against the express wish of the heirs, appealed this case to the Supreme Court. Neither the heirs nor the administrator were in the State when the appeal was taken. Both the petition for appeal and the bond on appeal are bogus and not in accordance with law. The

petition on appeal was never signed by either the administrator or by the heirs (Record, 360), but was signed by Hiram W. Currey as attorney without the authority of any of them. In like manner the bond on appeal is illegal and unlawful. It, too, was signed on behalf of the heirs and the administrator but without their authority and against the express wish of the heirs, by Attorney Currey (Record, 364). The heirs could not be sued for costs incurred in this suit by the beneficiary of the bond, because they did not authorize its execution. This is only another evidence of the determination of these attorneys who "snatched" the case in the first instance to keep these heirs in litigation against their express desire so to do.

**COUNSEL'S CONTRACT OF EMPLOYMENT IS  
NOT ONLY ILLEGAL AND NULL AND VOID  
BUT ALSO IN VIOLATION OF A PENAL  
STATUTE OF THE UNITED STATES.**

Counsel Thompson, acting for himself and the estate of H. W. Currey, his former associate, now for the first time brings from the darkness of its repose their contract of employment, and pleads with this Court that the case should not be dismissed even though all the parties interested want it dismissed, and have passed all their title by warranty deeds to Paul A. Ewert because of a contract of employment made by them with George Redeagle before the suit was instituted, to wit, on May 16, 1916. This contract is found on page 5 of their brief. It was never until now brought to the notice of this appellee.

This contract is illegal and null and void upon its face because by its terms they exacted from George Redeagle an agreement that in consideration of their

service he would convey to them one-half of the lands in controversy or any of the benefits derived or recovered therefrom. This is in direct violation of law, because the lands at that time were inalienable and the restrictions did not expire until September 26, 1921. The same is true with respect to the other portion thereof where they contract with Redeagle that he shall give them "one-half of all moneys recovered by reason of such suit." This of necessity would have to refer to royalties and rents, and these royalties and rents as held by the Supreme Court in the case of the United States vs. Noble, *supra*, are also inalienable and the contract in that respect is in violation of law.

This contract is not only null and void at law but is a direct violation of the penal statute of the United States providing that contracts made with Indians of this character, where the lands are inalienable, seeking to acquire any interest in lands, and thereby cloud the Indian title, shall be punished by both fine and imprisonment (Act of Congress, —, 1910).

Counsel say that under this contract they did considerable legal work in the preparation of this appeal, etc. It needs no argument upon our part to convince this Court that it should not assist counsel in carrying out this unlawful and illegal contract. The estate of Redeagle is solvent by thousands of dollars.

As heretofore stated, Redeagle never wanted to bring this law suit. By his stipulation of July 5, 1918 (Record, 186), he expressly recites that the suit was not brought by him voluntarily, but that he was solicited by counsel Thompson and Currey to bring the suit and was induced while in Thompson's office to permit the use of his name in the bringing of said suit.

Plaintiff Redeagle, prior to his death, repeatedly

stated to the Appellee Ewert that he wanted to stand by his settlement and did not want to take the appeal, and he did not sign the petition in the appeal and he did not sign the bond in appeal. (Record 177, Record 181). Redeagle possessed some of the attributes of common everyday honesty.

Counsel Thompson cites numerous cases where the courts have sought to protect attorneys in their counsel fee, but in all of these cases that action occurred after judgment had in fact been obtained in favor of their client and they in each instance held lawful contracts, not contracts made in violation of law. The record and the testimony in this case taken at the hearing before Judge Williams shows conclusively that the real plaintiffs in this suit have all along been, not the Indian, Redeagle, or his heirs, but counsel themselves. In the first instance they "snitched" the lawsuit by sending out and getting Redeagle to come into the office of Thompson at Miami, Oklahoma, where they induced Redeagle to institute the suit, although Redeagle himself for seven and a half years had been satisfied with the sale of his land as made by the Secretary of the Interior. Redeagle, after judgment was rendered against him in the United States District Court for the Eastern District of Oklahoma, besieged Ewert at his office in Joplin, Missouri, repeatedly, asking for a settlement, and finally settled with Ewert's clerk, Miss Cora Hallan, during Ewert's absence from the State. They again hunted up Redeagle and if they rather than Redeagle are to be believed they forced Redeagle after the settlement to disregard it and take an appeal. Then Redeagle died. The heirs of Redeagle then wished to make a settlement. They are all adults. Like their father they are highly educated, being grad-

uates of Carlyle or Haskell Universities. Appellee Ewert, who writes this, states upon his honor as an attorney that these heirs have repeatedly advised him that attorneys Thompson and Currey repeatedly asked them to enter into a contract of employment with them, but that they as often refused. Very recently they advised Appellee of this purported contract of Thompson and Currey with their father. They stated to this Appellee that they had never seen the contract and that Thompson and Currey refused to let them see it, but that they, each of them, were solicited to ratify the contract, in the dark; that Currey and Thompson told them they had some kind of a contract but it was "locked up in the bank." After the restrictions expired on September 26, 1921, they again attempted to get these heirs to ratify this contract, now brought to light which is in law and in fact not only unlawful but criminal in its character.

In the face of all of this their plea that they have advanced costs must fall on deaf and unsympathetic ears. As heretofore stated, the record shows that they themselves not only signed the petition for appeal but also signed the appeal bond; that the heirs did not sign it.

The vain attempts of counsel to get these heirs to ratify a contract not only illegal and criminal upon its face, but unconscionable in its terms is too plainly apparent. And again, on page 17 of their brief, they attempt to mislead this Court by citing from the Oklahoma Statute a provision that a contingent fee may be contracted for, but they wilfully deceive this Court by telling a half-truth in that they neglect to advise the Court that the same chapter of the law provides before such a contract may be enforced it is necessary

that they advise the opposing party thereof or in plain words write upon the petition that an attorney's lien is claimed for services rendered. They dared not do that in this case. They kept the contract hidden in the vaults of the bank because they knew it was unlawful and null and void and they were only waiting the day when the restrictions should expire in order that they might prepare a new contract with George Redeagle if he lived and with his heirs if he died.

EWERT NOW HAS ALL THE TITLE TO THE  
LAND AND THIS COURT WILL NOT LITI-  
GATE FOR MERE AMUSEMENT.

Appellee Ewert bases his motion in this case upon deeds of warranty made, executed and delivered by him by the three heirs, the only persons who have any interest whatever in the estate or in the lands, the subject-matter of litigation. He also bases it upon the deed given by George Redeagle under date of July 5, 1918, to Paul A. Ewert, and approved by the Secretary of the Interior of the United States. At the time that the stipulation for settlement was made between Ewert and Redeagle (Record 186), Redeagle also executed a deed to this land and delivered it to Paul A. Ewert. This deed in the first instance, to wit, on July 16, 1918, was submitted to the Secretary of the Interior for approval. Prior to that date the United States District Court for the Eastern District of Oklahoma had held that the original deed from the Secretary of the Interior to Franklin Smith, as the Agent of Paul A. Ewert, was valid, and dismissed plaintiff's petition. Prior to the purchase of the land in question and the approval of the deed both the Secretary of the Interior and the Attorney General had advised Ewert that his

purchase was lawful both in this Redeagle matter and in the Bluejacket matter. (Record, p. 93; Record, p. 99, and opinion of Attorney General cited in Bluejacket Case, Ewert brief, p. 91.)

The letter set forth on page 23 of Appellants' brief showing the return of the deed of July 5, 1918, to Ewert without prejudice was based upon the fact as shown by the letter, that the Secretary of the Interior and the Attorney General had both held that the deed to Ewert through his Agent Smith, was legal and valid. The office therefore returned the deed to Ewert because as they state in their letter they had by their original deed from George Redeagle to Franklin Smith conveyed a lawful title to the lands in question and could not by this new deed of July 5th from Redeagle to Ewert make his title any better.

However, after Circuit Court of Appeals held in the Bluejacket Case that Ewert could not lawfully receive that deed, the Secretary of the Interior and the Commissioner of Indian Affairs without hesitation approved that same Redeagle deed when asked to do so by Ewert. In this connection it may be stated that the matter of the approval of this deed set forth on page 15 of movant's original brief was directed to the attention of Attorney Thompson. Before the approval of the deed the Commissioner of Indian Affairs gave Thompson thirty days in which to present any reason which he or his clients had why the deed should not be approved. They entered their protests but the Secretary of the Interior and the Commissioner of Indian Affairs found no merit in them and approved the deed.

That the Secretary of the Interior had such a legal right is clearly established by the general holding of the Supreme Court in the case of Harris vs. Bell, 254

U. S. 103-109. The deed in question was resubmitted to the Commissioner of Indian Affairs under date of June 10, 1920, and it was approved on January 27, 1922, and its approval therefore relates back to the date of the deed. The authorities are numerous to the effect that where a Secretary of the Interior has before him under consideration the matter of approval or disapproval that he retains the right to act even after the period of restriction has expired.

THE DEED FROM DOANE REDEAGLE TO J. H.  
COWELL IS A SWINDLE AND COUNSEL  
THOMPSON KNOWS IT.

Counsel Thompson attempts to bring into this case at this time numerous matters with which this Court is not concerned. On page 25 of his brief he sets forth a purported deed from Doane Redeagle to J. H. Cowell and says that by reason of that deed innocent parties are now concerned. If the deed were genuine, if its delivery was in fact authorized, it would be no defense as against the approved deed made by Redeagle to Ewert under date of July 5, 1918. But the facts in the case are that this deed is a bold swindle and its recording as well as its delivery was entirely unauthorized and counsel Thompson knows it.

The facts are that when the Redeagle heirs went to Attorney Thompson and told him that they had no faith in their lawsuit because the lower court had decided against them and held the Ewert deed good, and because the Circuit Court of Appeals had held that the settlement with their father, George Redeagle, was valid and by its decision in the Bluejacket the case was barred by laches. Thompson told them he didn't care to settle with Ewert at all. They then told Thompson,



as they say in their letter, that they intended to settle with Ewert. Ewert had told them to go right to Thompson and tell him that he was making them a proposition of settlement; that Thompson then told these heirs not to settle with Ewert, but that he would find them a buyer. Thereupon he reported the matter to his business associate, Wesley M. Smith, and in pursuance thereof Smith, who is also a client of Attorney Thompson, got Doane Redeagle into his suite of offices, a portion of which is occupied by an attorney, Ray McNaughton, and there, with the full knowledge and consent of the said Thompson, they got young Redeagle to enter into a contract so utterly unconscionable as to be revolting. That contract was so revolting in its character and sense of justice that they put it in the safe in this suite of rooms occupied by Thompson and Ray McNaughton, *in escrow*. The deeds from the Redeagle heirs to Ewert were dated November 19, 1921, and the LeRoy Redeagle deed recorded on the same day.

This robber's agreement between Wesley M. Smith and Doane Redeagle was placed in escrow with Ray McNaughton by the terms thereof. Ray McNaughton was acting for Wesley M. Smith, and we believe Scott Thompson. When Doane Redeagle learned from his attorney, A. C. Towne, of Miami, Oklahoma, how he had been swindled, he and his attorney went to Wesley M. Smith and Ray McNaughton and asked for a copy of the "escrow agreement." This was denied them. They then asked for leave to copy the escrow agreement and this was denied them. The most that they were permitted to do was to read the agreement. Attorney Towne then and there made notes of the agreement and the agreement is in substance as follows:

## THE SWINDLING AGREEMENT.

"This agreement made this 17th day of October, 1921. Doane Redeagle having made a deed to J. H. Cowell, of Kansas City, Mo., of all his interest in the lands and royalties of the premises involved in Suit No. ——— of Kendall, administrator of the estate of George Redeagle against Paul A. Ewert in the United States District Court of (giving the court and describing the lands) and said J. H. Cowell is to pay to said Doane Redeagle the sum of \$100.00 per month until said suit is finally determined and if said suit is determined in favor of said administrator said J. H. Cowell is to pay the total sum of \$4,000. Said J. H. Cowell may discontinue the monthly payments at any time, but in case suit is determined in favor of said administratrix he shall pay said four thousand dollars at once. Said Wesley M. Smith in consideration of the assignment of all the rights of said J. H. Cowell in said premises agrees to make all of said payments as herein provided. This agreement to be left in escrow with Ray McNaughton.

(Signed) DOANE REDEAGLE.  
WESLEY M. SMITH.

Attached to this agreement so placed in escrow is the deed set up by counsel Thompson on pages 25 and 26 of his brief.

Think of it,—these heirs had informed counsel Thompson that they were offered six thousand dollars apiece cash because Ewert was being embarrassed by the clouding of his title and had to make good with his lessees who were mining land. And yet here is this buyer furnished by Scott Thompson, to wit, his bus-

iness associate Wesley M. Smith, who is also his client, doing business through a dummy, J. H. Cowell, and they offer this Indian boy the sum of one hundred dollars per month while this Redeagle case is pending in the Supreme Court and they knew it was to be set in a few months. If they lost the suit the poor boy was to get nothing except a hundred dollars a month for several months, and if they won the suit he was to get four thousand dollars out of the twenty thousand dollars which would represent his one-third of the accumulated royalties alone.

But further,—attached to this agreement was the deed set up by Thompson in his brief. It also was in escrow and attached to this agreement. As heretofore stated the Redeagle deeds of LeRoy and Josephine were filed immediately after their delivery on November 19, 1921. When Smith and Thompson saw these deeds go of record they hurriedly detached from the above agreement the deed in question without any authority from Doane Redeagle, but in collusion with Ray McNaughton who was not authorized to deliver up the deed, and hurried and placed it of record. The revenue stamps show a consideration of four thousand dollars the same as is mentioned in the escrow agreement, but young Redeagle has never received anything for the deed except the few hundred dollars received at the rate of a hundred dollars a month since October. He is now instituting a suit to set aside the deed and agreement upon the ground of fraud.

And yet Counsel Thompson wishes this Court to take into consideration this crooked and unconscionable transaction with the facts of which he is thoroughly familiar.

Wisely, Wesley M. Smith, the beneficiary of this un-

conscionable agreement, is not asking this Court to be made a party plaintiff or defendant. If this Court considers that this transaction has any bearing at all upon the matters now under consideration before this Court, then it should make an order directing the said Scott Thompson who is presenting this matter, to present also to this Court the escrow agreement which was attached to the warranty deed which he sets up.

The Appellee Ewert, who writes this brief, cannot see how this Court is interested in that transaction. The sole question before it is whether the parties who are now in Court have settled the lawsuit which exists between them. The heirs have a right to dismiss their own lawsuit if they please.

Counsel Thompson in his brief presents numerous other matters which are foreign to the matters under consideration and we will follow them no further.

Respectfully submitted,

HENRY C. LEWIS,  
WILLIAM R. ANDREWS,  
PAUL A. EWERT,  
*Attorneys for Appellee.*

FEB 17 1921

JAMES D. MAHER

CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1920.

—  
No. **157**  
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JOHN S. KENDALL, ADMINISTRATOR, ETC., ET AL.,  
*Appellants,*

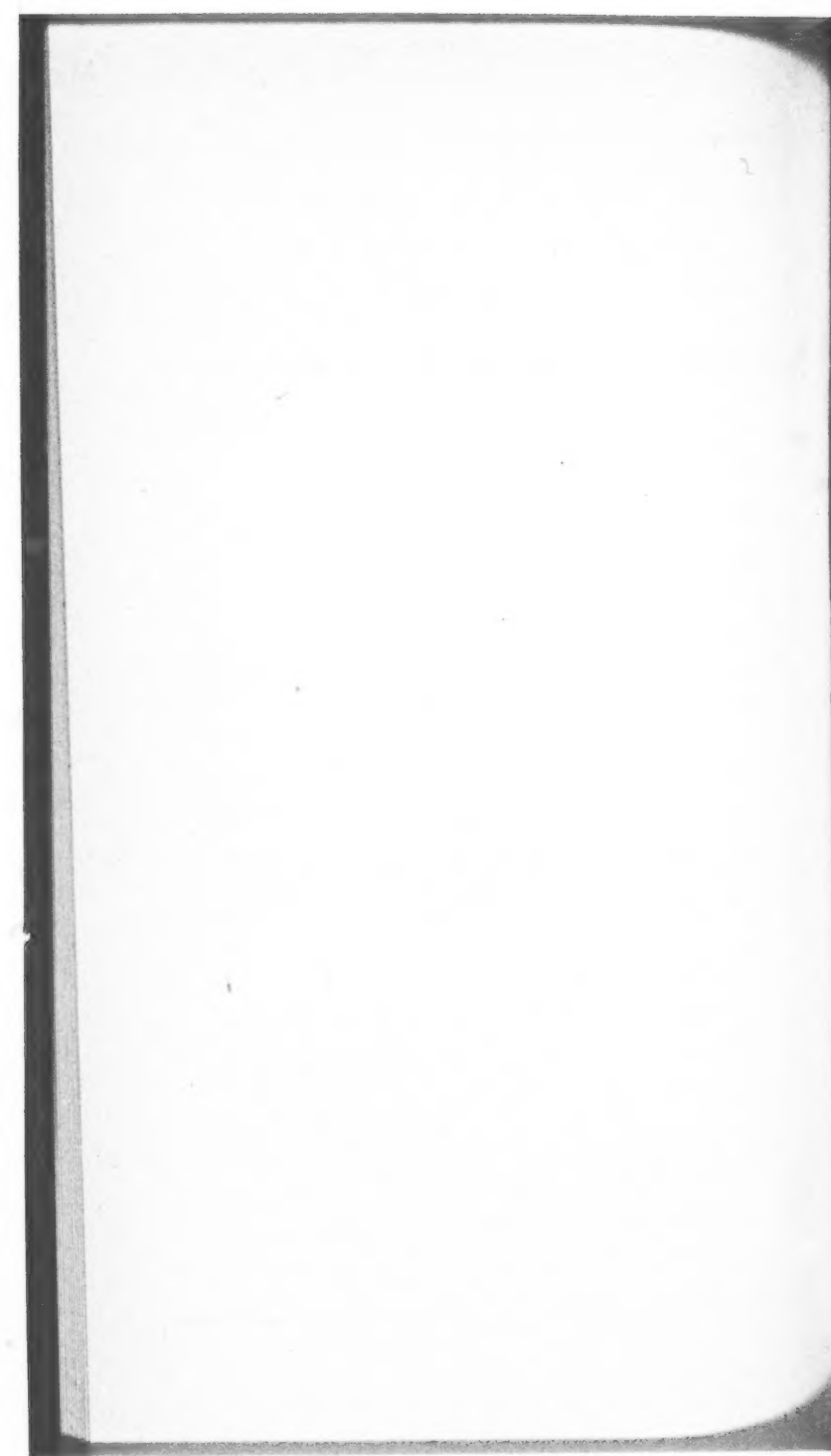
v.

PAUL A. EWART,  
*Appellee.*

—  
ON APPEAL FROM THE CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT.

—  
MOTION TO DISMISS OR AFFIRM.  
—

HENRY C. LEWIS,  
*Attorney for Appellee.*



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1920.

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No. 592.

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JOHN S. KENDALL, ADMINISTRATOR, ETC., ET AL.,  
*Appellants,*

v.

PAUL A. EWART,  
*Appellee.*

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**ON APPEAL FROM THE CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT.**

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**MOTION TO DISMISS OR AFFIRM.**

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Appellee respectfully moves the Court to dismiss the appeal herein for want of jurisdiction in this Court to entertain the appeal because the decree of the Circuit Court of Appeals is not appealable to this court.

If the Court has jurisdiction, appellee respectfully moves the Court to dismiss the appeal because the case

has been settled by compromise and stipulation of dismissal; or to affirm the decree below because the appeal is frivolous.

#### STATEMENT.

Kendall's deceased, George Redeagle, a Quapaw Indian, filed the complaint herein against defendant (appellee here) in the United States District Court for the eastern district of Oklahoma (2). He alleged that he inherited from another Quapaw, as part of the latter's allotment, one hundred acres of land. That he sold the said land to Franklin M. Smith, and that while the purchase and deed were in the name of Smith, the real purchaser was defendant. That Smith afterward conveyed to defendant. The complaint admits that the deed from Redeagle to Smith was approved by the Secretary of the Interior, but alleges that defendant was disqualified as purchaser because at the time of the purchase he was a special assistant to the Attorney-General of the United States, employed by the latter to conduct certain legal proceedings involving Quapaw allotments; that by reason of his official employment defendant had an "influence" over Quapaw Indians; that defendant knew that plaintiff needed cash and therefore schemed with Smith to purchase from plaintiff for an inadequate sum. That plaintiff would not have conveyed to Smith had the former known the latter was agent for defendant. The complaint prays that defendant be declared a trustee for plaintiff and to account to the latter for a mortgage given by defendant and for rent.

The answer (11) admits the two conveyances, that defendant was the real purchaser, and that he was em-



ployed at the time of purchase by the Attorney-General in certain legal work involving Quapaw lands, but denies that his employment was of the scope and character alleged in the bill, and denies that he was disqualified as a purchaser. The answer avers that plaintiff petitioned the Secretary of the Interior, through the Indian Agent, for the sale of his land under the Act of May 27, 1902 (32 Stats., 245-275) which provides for the sale of inherited Indian allotments under the supervision of the Secretary, the conveyance to be valid if approved by him. That the land was thereupon publicly advertised for sale by the agent for two separate periods, and that no one bid; that upon a third publication the defendant, through Smith, bid thirteen hundred dollars, which was more than the official appraisement, and that the bid was accepted and the sale and deed approved by the Secretary. Avers that defendant had purchased other inherited land in his own name while in the same employment and that such purchase had been approved by the Attorney-General and the Secretary. Denies any breach of duty, sets up the statute of limitation, pleads estoppel because plaintiff stood by while defendant made valuable improvements, and avers that the institution of the suit was not the voluntary act of the plaintiff.

No issue raised by the pleadings was determined by the Circuit Court of Appeals.

*In the trial court.*

Testimony was taken, the case heard on the issues raised by the pleadings, and the trial court entered a decree thereon for defendant on March 4, 1918 (83).

On July 17, 1918, there was filed in the trial court a stipulation between plaintiff and defendant, dated

July 5, 1918, dismissing the suit "with prejudice," plaintiff therein stating that the suit was not his voluntary act (186). That stipulation was entered on the appearance docket (187).

On August 21, 1918, the district judge allowed plaintiff an appeal to the Circuit Court of Appeals (178). The appeal was perfected on the same day (178-81).

Subsequently, on September 2, 1918, attorneys for plaintiff filed in the district court a "Petition to cancel and set aside stipulation for dismissal" (183-4), alleging that the stipulation had been procured by certain false and fraudulent representations. No action on that petition was taken by the district court except as hereinafter shown, and plaintiff docketed the appeal.

*In the Circuit Court of Appeals.*

On January 6, 1919, appellee (defendant) filed a motion "To dismiss the appeal and strike case from the docket," the motion setting up the stipulation and alleging that the attorneys for plaintiff had fraudulently procured the appeal because they knew, at the time they procured it, that the stipulation for dismissal had been filed and docketed (199). On the same day the Circuit Court of Appeals referred the case back to the trial court,—

"With directions to investigate the circumstances of the stipulation for dismissal of the suit filed in said court on July 17, 1918, as appears from the transcript of the record now on file in this Court, and to report to this Court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the motion to dismiss will stand continued in this court pending the receipt of the report from said District Court" (200).

On February 7, 1919, the death of Redeagle was suggested and the suit revived in the name of Kendall, administrator, and certain heirs at law (204).

On Sept. 6, 1919, the District Court reported its findings on the reference, which were that the stipulation was fairly obtained and for a consideration of \$700, the report concluding thus:

"I find as a matter of fact and as a conclusion of law that said stipulation is valid, and in fact and in law is a final settlement of the issues involved in the above styled case" (217-18).

Appellants filed, in the Circuit Court of Appeals, exceptions to the report of the District Court (351), and appellee filed answer thereto (352). Order of submission (356).

On March 1, 1920, the Circuit Court of Appeals dismissed the appeal because of the settlement and stipulation of dismissal ~~(367)~~ (357).

Petition of appellants for rehearing (358). Denied (359).

On Aug. 23, 1920, Circuit Judge Stone allowed an appeal to this Court (360).

### BRIEF.

*This court has not jurisdiction and the appeal should therefore be dismissed.*

### I.

The case is not one in which there was a consent decree and therefore appealable as were *N. C. & St. L. Ry. v. U. S.*, 113 U. S., 261, 266; *U. S. v. Babbitt*, 104

U. S., 767, 768; *Pacific R. R. v. Ketchum*, 101 U. S., 289, 295, 297; and *Eustis v. City of Henrietta*, 74 Fed., 577, 578. The only decree nisi here was involuntary, after a hearing. But that decree and all other anterior proceedings <sup>were</sup> swept away by the stipulation of dismissal, which left nothing presented by the record to the appellate court. That the settlement was made and the stipulation filed after decree does not change the situation; *Wood Paper Co. v. Heft*, 8 Wall., 333, 336; *Dakota County v. Glidden*, 113 U. S., 222, 225; *Cleveland v. Chamberlain*, 1 Black, 419; *Lord v. Veazie*, 8 How., 251, 254; *Thorp v. Bonnifield*, 177 U. S., 15; *Benner v. Hayes*, 80 Fed., 953; *People v. Burns*, 78 Cal., 645; *Hunter v. Dickinson*, 3 Colo. App., 372; *Salmon v. Pixlee*, 2 Day (Conn.) 242; *Monnett v. Hemphill*, 110 Ind., 299; *Ziegler v. Hyle*, 45 Kan., 226; *Lee v. Vacuum Oil Co.*, 126 N. Y., 579. Even had there been no stipulation, a voluntary dismissal after decree would have barred the appeal; *Macrea v. Nelan*, 33 Ga., 205; *Bradley v. Gilbert*, 155 Ill., 154; *State Bank v. Hayes*, 3 Ind., 400; *Miller v. Keith*, 26 Miss., 166; *Mahneke v. Tacoma*, 1 Wash., 18. In both classes of cases the appeal or writ of error was dismissed. Even where the settlement or agreement of dismissal is not made until after the case reaches this court the appeal will be dismissed; *Bucks Stove & Range Co. v. Am. Fed. Labor*, 219 U. S., 581; *Addington v. Bruce*, 125 U. S., 693.

It is true that plaintiff may not dismiss after decree without consent of court, because the decree may be adverse to him, or it may be one by which defendant acquires affirmative rights, and plaintiff could possibly sue again (14 Cyc., 400); and this even though defendant consents (*Chic. & Alton R. R. v. Union Rolling*

Mill Co., 109 U. S., 702, 714-15). But here the trial court ultimately found the agreement "in fact and in law a final settlement of the issues," hence the decree was superseded by the stipulation and there was therefore no decree nisi before the Circuit Court of Appeals.

Even had there been such a decree before that court, the stipulation was a bar when set up as such, and such a decree would therefore not have impaired the force of the motion to dismiss in that court. So that even if it be assumed that that court was the one to give its consent it did so by the dismissal.

## II.

A voluntary non-suit will not support an appeal because it is an abandonment and because plaintiff is not allowed to take inconsistent positions; *Evans v. Phillips*, 4 U. S., 347; *Cen. Trans. Co. v. Pullman's Car Co.*, 139 U. S., 24, 39, and cases cited; *Schulte v. Kelly*, 124 Mich., 332; *Cossar v. Reed*, 17 Q. B., 540. The same reasons apply to a voluntary dismissal. The stipulation here was really a retraxit because it was made by the party himself and not by his attorney; *Lambert v. Sandford*, 2 Blackf. (Ind.) 137; *Bacon's Abr.*, "Non-suit;" *Bouvier's Law Dict.* A retraxit is an "open, voluntary renunciation of the claim in court, by which plaintiff forever loses his action;" *U. S. v. Parker*, 120 U. S., 89, 95. A voluntary dismissal is an "abandonment" of the proceedings; *ibid*; the same after judgment; *Minor v. Mechanics' Bank*, 7 U. S., 445, 464. The difference between non-suit and such a dismissal is only that the former is always taken before decree; and is never an estoppel against a new

suit (U. S. v. Parker, *supra*, 95), while the dismissal may be made at any time not prejudicial to defendant, or by agreement at any stage; and is an estoppel if plaintiff so agrees (Jacobs v. Marks, 182 U. S., 583, 592) as here.

A voluntary dismissal "is in the nature of a non-suit" and "does not operate on the merits"; Baer Bros. v. Denver & R. G. R. R., 233 U. S., 479, 491, citing others in this court. The question in those cases was whether such a dismissal is a bar to a new suit. Of course the dismissal here is such a bar because it is "with prejudice," but that question is not in this case. The point here is that a voluntary dismissal is inherently one which does not operate on the merits and therefore there is nothing from which to appeal. The estoppel does not change its inherent character in its relation to the merits; it is simply an agreement not to sue again.

In any event it is the fundamental law of this court that only a final decree nisi, and one which settles all the issues raised by the pleadings, will support an appeal. Here, as a result of the stipulation, there is no decree at all, so the Circuit Court of Appeals had no jurisdiction and so dismissed the appeal. So here.

### III.

The stipulation was filed and attacked in the trial court and it was therefore the province of that court to determine its validity. That was not an issue raised by the pleadings. And as a voluntary dismissal is a matter of discretion (Pullman's Car Co. v. Trans. Co., 171 U. S., 138, 146; Chic. & Alton R. R. v. Union Rolling Mill Co., 109 U. S., 714; Georgia Pine Turpentine

Co. v. Bilfinger, 129 Fed., 131; Streets' Fed. Eq. Pr., vol. 2, p. 806), and therefore not appealable, certainly the finding that the dismissal was valid is equally so, as that very question underlies that discretion. So that the Circuit Court of Appeals had nothing to do but dismiss. So here. If it be assumed that it was the province of the latter court to decide that question, and that it did so as appears probable from its decree, that was discretion in that court and, by the same token, not appealable here.

Of course the finding below that the stipulation is valid assumes its validity from every possible angle, so that question cannot be argued here from any angle.

If, *by any chance*, this Court should consider that question (evidence for defendant 279-335, 341-349) it is only necessary to say that two courts below found the facts in favor of the stipulation, which under the established rule precludes discussion here. The only question independent of those facts which was raised by appellants below assumes that the trial court was wrong in not entering a decree for plaintiff on the merits because defendant was prohibited by law from purchasing and urges that therefore the stipulation should not be upheld because it is an attempt to validate an invalid transaction; as to which it is sufficient to say that the stipulation operates on nothing but the suit.

*Even if this court has jurisdiction it should dismiss or affirm.*

(a) The only possible question in the record is the validity of the stipulation, and that was discretion below, so that if, by any chance, this court has jurisdiction, it has nothing to do but dismiss, for the case is in the same situation as though the stipulation had

been filed in this Court, as in *Addington v. Bruce, supra*, or the agreement had been announced in this Court, as in *Bucks Stove & Range Co. v. Am. Fed. Labor, supra*, whereupon the court dismissed the appeals.

(b) The dismissal of the appeal below was because it had been erroneously allowed. But even if that appeal be assumed to have been good, but dismissed as a direct result of the stipulation, a voluntary dismissal does not operate on the merits, as does a decree by consent, and is therefore not within *N. C. & St. L. Ry. v. U. S.*, 113 U. S., 261, and the others cited with it in the first paragraph of this brief. But if it is,—although it is idle to suggest it, because here there was ultimately no decree nisi and the decree of dismissal does not operate on the merits—that decree should be affirmed forthwith because those cases all declare that while this Court must take jurisdiction of an appeal from a consent decree, it will not permit appellant to assign as error the very decree to which he has consented, but will affirm. So that the appeal is not only so frivolous as to require no further argument, but the rule of those cases positively precludes it. So the case should be affirmed forthwith.

Respectfully submitted,

HENRY C. LEWIS,

*Attorney for Appellee.*

To

ARTHUR S. THOMPSON, Esq., Miami, Oklahoma;

*Attorney for Appellant.*

Please take notice that the foregoing motion and brief will be submitted to the court on Monday, March 14, 1921, or as soon thereafter as counsel can be heard.

HENRY C. LEWIS,

*Attorney for Appellee.*



FILED

MAR 12 1921

JAMES D. MAHER,  
CLERK

No. **157**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1920.

JOHN S. KENDALL, ADMINISTRATOR,  
ETC., ET AL., APPELLANTS,

VS.

PAUL A. EWERT, APPELLEE.

ON APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT.

BRIEF IN OPPOSITION TO DISMISS  
OR AFFIRM.

ARTHUR S. THOMPSON,  
*Attorney for Appellant.*

HIRAM W. CURREY,  
*of Counsel.*

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**No. 592.**

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IN THE  
**Supreme Court of the United States**

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OCTOBER TERM, 1920.

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JOHN S. KENDALL, ADMINISTRATOR,  
ETC., ET AL., APPELLANTS,

VS.

PAUL A. EWERT, APPELLEE.

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ON APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT.

---

**BRIEF IN OPPOSITION TO DISMISS  
OR AFFIRM.**

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**STATEMENT.**

Plaintiff's intestate filed suit in the District Court for the recovery of his Quapaw Indian land alleging: That intestate was at time of execution of the deed a full blood Quapaw Indian and his land

restricted from sale; that the defendant was at such time a special assistant Attorney General of the United States commissioned to investigate illegal sales and leases to Quapaw lands and bring prosecution to cancel same (Petition Record 2-7); that being employed in Indian affairs defendant was prohibited and disqualified from purchasing or being interested in a trade with the intestate by reason of public policy and Revised Statute of the United States, Section 2078, which reads:

"No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of five thousand dollars, and shall be removed from his office."

That defendant realizing his disqualification secured a dummy to take the title and hold for him. Defendant admits this (His answer Record, page 15). The trial court tried this case with *Bluejacket v. Ewert* and by order used same evidence in each, the court found for the defendant in each case and both cases were appealed to the Circuit Court of Appeals. Defendant filed with the Appellate Court motion to dismiss this case on ground he had settled the case with plaintiff's intestate George Redeagle (Record 199). The purported settlement was a stipulation signed, pending appeal, by defendant Ewert and the full blood Indian plaintiff without his attorney's knowledge (Record 186). The Appellate Court upon presentation of said

motion to dismiss made an order (Record 200) referring to the District Court the matter for investigation, directing the taking of testimony and reporting same back with its findings thereon. The Judge of the District Court made his findings (R. 218) and reported the evidence back to the Circuit Court of Appeals. Exceptions to the findings were filed by appellant (Record p. 251). The Circuit Court of Appeals upon consideration of the motion to dismiss and upon a consideration of the findings of Judge R. L. Williams "and upon a reading and consideration of the evidence on which that finding is based," dismissed the appeal (Record 357).

An appeal was taken from this order of dismissal to this court. In the companion case, *Bluejacket v. Ewert*, filed in this court and numbered 624 and 653, the Record page 189 contains the opinion of the Court of Appeals holding that defendant Ewert was disqualified from dealing with those Indians and annulling his deed as to the minor plaintiffs, but denying relief to the adult plaintiffs on account of delay in bringing suit. The adult plaintiffs in Bluejacket case are now appealing to this court and asserting that laches and limitation statutes do not bar a restricted Indian.

The appellee herein now moves dismissal of this appeal.

## QUESTIONS.

(1) The judgment of the Circuit Court of Appeals dismissing the appeal was a final judgment from which an appeal may be taken.

(2) The original transaction of Ewert whereby he purchased this restricted Indian land was prohibited by statute and public policy and therefore utterly void.

(3) A prohibited act, violative of public policy, cannot be ratified, compromised, or settled.

### I.

The judgment of the Circuit Court of Appeals dismissing appellant's appeal was a final order from which an appeal may be taken.

"Final decree" for the purpose of determining right of appeal should not be used in its technical sense. The correct test is: *Did the action of the Circuit Court of Appeals in dismissing the appellant's appeal terminate the controversy between the parties?* If it did, there can be no question as to its finality for the purpose of appeal.

"This finally determined the entire controversy litigated between the parties and nothing remained but to carry the decree into execution. \*  
\* \* It is there shown that where the entire subject matter of a suit is disposed of by a decree, the mere fact that accounts remain to be adjusted

and the bill is retained for that purpose, does not deprive the adjudication of its character as a final and appealable decree."

*Lewisburg Bank v. Sheffey*, 140 U. S. 445.

"The litigation of the parties as to the merits of the case is terminated, and nothing now remains to be done but to carry what has been decreed into execution. Such a decree has always been held to be final for the purpose of an appeal."

*Winthrop Iron Co. v. Meeker*, 109 U. S. 180-183.

"A decree, to be final for the purpose of appeal must leave the case in such a condition that, if there be an affirmance in this court, the court below will have nothing to do but to execute the decree it has already entered."

*Dainese v. Kendall*, 119 U. S. 53.

Here the intestate of appellant had a judgment rendered against him by the trial court from which he had an unquestioned right of appeal. He was perfecting his appeal when defendant obtained (fraudulently we claim) a stipulation from the Indian plaintiff dismissing *with prejudice* the cause of action sued upon. The stipulation carried the style of the case in the trial court. *It was never presented to or acted upon by the trial court.* The appeal being perfected, upon motion filed by appellee Ewert, the Circuit Court of Appeals dismissed the appeal. No further action could be taken. The judgment of the trial court denied the Indian's claim to this property. He had an appeal to a court where the judgment might be reviewed on its merits. It



has been denied him. Nothing could be more final and decisive in the matter.

We claim the stipulation was obtained fraudulently, but even if obtained fairly we assert it is void as a matter of law because it is necessarily tainted with the vice and invalidity of the original purchase. We are entitled to the judgment of this court on this question.

At the time the Circuit Court of Appeals filed its opinion in *Bluejacket et al. v. Ewert*, holding that the transaction was within the condemnation of the United States Revised Statutes, Section 2078, *supra*, an order was entered in this case as follows:

"This cause came on to be heard on the transcripts of the records from the District Court of the United States for the Eastern District of Oklahoma, the motion of appellee to dismiss the appeal, the finding and conclusions of said District Court under the order of reference of this court, etc., and the exceptions of appellants, and was argued by counsel.

Upon consideration of the motion of the appellee to dismiss the appeal in this cause on the ground that this suit was compromised and settled by the agreement of the parties before the appeal was taken, and upon a consideration of the finding of the Honorable R. L. Williams, United States District Judge, that the stipulation of compromise and settlement on which the motion was founded was valid 'and in fact and in law is a final settlement of the issues involved' in this suit, and upon a reading and consideration of the evidence on which that finding is based and the arguments and briefs of counsel.

It is hereby ordered, adjudged and decreed that the appeal in this cause be, and the same is

hereby, dismissed with costs; and that Paul A. Ewert have and recover against John S. Kendall, administrator of the estate of George Redeagle, deceased, and Josephine Abrams, LeRoy Redeagle and Doane Redeagle, children and heirs at law, in the place and stead of George Redeagle, deceased, the sum of twenty dollars for his costs herein, to be collected according to law.

March 1, 1920."

The language in this decree,

"and upon a consideration of the finding of the Honorable R. L. Williams, United States District Judge, that the stipulation of compromise and settlement on which the motion was founded was valid 'and in fact and in law is a final settlement of the issues involved' in this suit and upon a reading and consideration of the evidence on which that finding is based and the arguments and brief of counsel," etc.,

is inconsistent with any other view than that the Court of Appeals passed its own independent judgment on the validity, force and effect of the compromise agreement. What does the Court of Appeals mean by the language

"and upon a reading and consideration of the evidence on which that finding is based"?

It had all the force and effect of an order affirming the judgment of the trial court. It had the effect of giving Ewert the full benefit of the trial court decree. Under what possible theory can this court refuse to review that judgment and pass its own judgment on the legal correctness of the decree of the Court of Appeals?

Counsel for appellee argues that the stipulation was a matter for the discretion of the trial court. We say

the trial court sitting as a court has never passed upon the validity of this agreement. The matter was referred to the trial judge sitting as a referee or commissioner *only*, and he was directed to take the testimony and report the same with his findings. He did so. Exceptions were filed to his findings and the Circuit Court of Appeals by its order makes it plain it was passing upon the evidence before it and drawing its own conclusions of law therefrom. The report of the trial judge thereon had no greater force than if the reference had been made to a member of the bar of the court. Counsel again says that if the Circuit Court of Appeals treated the matter as a hearing before it, then it was a matter of discretion and not appealable. The discretion was the duty to apply the law of construction to the stipulation. It did so, and we claim erroneously, thereby finally terminating appellant's rights. One's right to have final judgment of the law passed on his controversy cannot be disposed of by saying it is discretionary. This court in

*Farmers Loan Co.*, 129 U. S. 206, at page 215, said:

"The other reason given why the appeal should not be granted is that the action of the Circuit Court in the case is one within its discretion. All we have to say upon this subject is, that if it be an authority vested in the judges of the Circuit Court, it must be exercised and governed by the principles of a judicial discretion, and the very point to be decided upon an appeal here is, whether they had such discretion, and whether they exercised it in a manner that cannot be reviewed in this court.

"The question is one which in its nature must be a subject of appeal. Whether the court below can exercise any such power at all, after the case has been removed from its jurisdiction into this court by an appeal accompanied by a supersedeas, is itself a proper matter of review; and still more, whether, in the exercise of what the court asserts to be its discretionary power, it has invaded established rights of the petitioners in this case, contrary to law, in such a manner that they can have no relief except by an appeal to this court. This is a matter eminently proper to be inquired into upon an appeal from such an order. Upon the hearing of that appeal this court may be of opinion that the order was one proper to be made, in which case it will be affirmed. If, however, it believes that it was an improper one, and will seriously prejudice the rights of the petitioners, it will be reversed and set aside as it should be."

## II.

**The original transaction of Ewert whereby he purchased this restricted Indian land was prohibited by statute and public policy and therefore utterly void.**

A deed obtained by a "person employed in Indian affairs," within the purview of the foregoing Sec. 2078, from a full blood Indian, is not merely *void* in the sense that it is subject to be avoided, *but it is a nullity*, at the time it is made, and passes *not title at all, at any time*.

In *Telephone & Telegraph Co. v. Evansville*, 127 Fed. 187, 196 & 197, it is stated:

"Complainant's counsel confuse the words 'void' and 'voidable.' Such confusion has frequent-

ly occurred in statutes and decisions of courts, but in the cases cited in the original opinion herein the Supreme Court of the United States used the word 'void' in its strict and proper sense; and in the case of Central Transportation Co., *supra*, in the paragraph quoted in the original opinion, the court held the contract in that case to be 'not voidable only, but wholly void, and of no legal effect.' 'Contracts to do acts that are illegal, criminal or contrary to public policy \* \* \* are absolutely void.' "

"The law cannot recognize as valid any undertaking to do what fundamental doctrine or legal rule directly forbids. Nor can it give effect to any agreement the making whereof was an act violating law." *Gibbs v. Balliner Gas Co.*, 130 U. S. 396, 410.

In *Tole v. Gaines*, 25 Okla. 141, 143, it is stated:

"A contract which the law denounces as void is necessarily no contract whatever, and the acts of the parties in an effort to create one in no wise bring about a change of their legal status. The parties and the subject matter of the contract remain in all particulars just as they did before any act was performed in relation thereto. So that in the case at bar, when defendant made, executed, and delivered to plaintiff her deed to the tract of land, both parties knew, and are held to have known, that no transfer took place, that the grantor still owned the land and was still entitled to its possession, and that the grantee received naught for the money he paid, except the grantor suffered him to go into possession of the land."

In *Central Transp. Co. v. Car Co.*, 139 U. S. 24, 61, it is stated:

"that the rule 'stands upon the broad ground that the contract itself is void, and that nothing which has been done under it, nor the action of the court, can infuse any vitality into it;'"

In *Hedges v. Dixon Co.*, 27 Fed. 304, 306, it is stated:

"It was either good or bad, dead or alive, when it left the hands of the promisor. Take this illustration: If, in a state where usury avoids the entire contract, a usurious note be given, that note is void, and no willingness of the payee, no act of his, can transform that invalid into a valid contract. Of course it would be very satisfactory if the promisee, by consenting to a reduction of the interest, could give validity to a void promise, vitality to a dead contract."

In *Norbeck & Nicholson Co. v. State*, 32 S. D. 28, 33, 142 N. W. 847, 850, it is stated:

"But in no one of these cases, nor indeed in any case which has come under our observation, have the courts entertained any contract, or any rights growing out of a contract, where either the consideration was base, or the contract was against the express prohibition of the law. This, then, is the undoubted rule, that when a contract is expressly prohibited by law, no court of justice will entertain an action upon it, or upon any asserted rights growing out of it. And the reason is apparent; for to permit this would be for the law to aid in its own undoing."

Said the court, in dealing with a contract which contravened public policy in *Minn. D. & P. R. Co. v. Way*, 34 South Dakota, 435:

"The appellant had no legal authority to 'permit' that which constituted the consideration for this contract. It was an illegal consideration, which in effect, was no consideration."

If the appellee contends that this was an executed transaction and that he has had possession of the lands since the date of the first transaction, and therefore not within the rules of this case, his contention is answered by this court in *Pullman Car Co. v. Transp. Co.*, 171 U. S. pages 149 to 151, inclusive.

Mr. Ewert's only answer to the challenge of his right to take this deed was that the Interior Department and the Attorney General gave him permission to buy the land. See his answer R. P. 11-27 and his testimony Rec. pp. 93 and 101. But this court in most emphatic language answers that contention against him in *Prosser v. Finn*, 208 U. S. 67, 74 and *Waskey v. Hammer*, 223 U. S. 85, 94.

*Sage v. Hampe*, 235 U. S. 99 the court say:

"But the policy involved here is the policy of the United States. It is not a matter that the states can regard or disregard at their will."

In the *Sage* case, this court struck down a contract between white men concerning Indian land. They were not dealing direct with the Indian but the court held it contrary to public policy.

Here Ewert was employed to protect the property of this Indian. He dealt with and purchased the very subject matter of his trust in violation of a positive stat-

ute and the policy of the United States. *Bluejacket v. Ewert*, 265 Fed. 823.

The validity of the original purchase by Ewert determines the force and effect to be given the dismissal. This will be presented on the merits of the case.

### III.

**A prohibited act, violative of public policy, cannot be ratified, compromised, or settled.**

This case was determined in favor of the defendant on the same evidence as the case of *Bluejacket, et al v. Ewert*, and, by an order of the trial court entered in each case, the evidence in each was considered the evidence in the other. The judgment in both cases was for the defendant. Both cases were appealed to the Circuit Court of Appeals. Both cases were submitted to the trial and appellate courts on the same evidence and the same legal contention. An appeal was taken from the Circuit Court of Appeals to this court, in the *Bluejacket* case by defendant Ewert, and also by the adult plaintiffs, and that case is here now as number 624 and 653. The record showing the evidence in each was made the evidence in the other is as follows:

(*Kendall v. Ewert*, Rec. here No. 592, p. 83.)

"This cause was heretofore on March the 15th, 1917, consolidated for trial with the case of *Carrie Bluejacket et al*, against Paul A. Ewert, this defendant, Equity Number 2299, and the evidence taken in said cause, Equity Number 2299, considered as the evidence in this case."



And,

(*Ewert v. Bluejacket*, and *Bluejacket v. Ewert*,  
Rec. here, Nos. 624 & 653, p. 87.)

"This cause was heretofore on the 15th of March, 1917, consolidated for trial with the case of George Redeagle, against Paul A. Ewert, this defendant, Equity Number 2293, and the evidence taken in said cause, Equity Number 2293, considered as the evidence in this case."

The Circuit Court of Appeals held that the transaction was within the condemnation of the said section 2078. See opinion of court in Record in 624, and 653, or *Bluejacket v. Ewert*, 265 Fed. 823, which is supported by *U. S. v. Douglas*, 190 Fed. 482. Ewert's first deed was therefore, as held by C. C. A., illegal and void, and hence by it he got no title.

The original contract being contrary to public policy, this settlement is likewise contrary to public policy. The rule on the subject is, that if the compromise agreement is in any way connected with the original agreement (the original agreement being against public policy) the compromise is illegal and void even though there be an independent and new consideration.

As a part of the so-called settlement agreement, Ewert took a deed to this restricted land. See testimony of witness Hallam, Rec. p. 303, as follows:

"Q. At that time there was another paper executed?

A. At that time there was a quit-claim deed executed.

Q. I show you paper marked Defendant's Ex-

hibit #6 and ask you if that is the paper that was executed at that time.

A. It is.

Mr. Ewert: Defendant offers Defendant's Exhibit No. 6 in evidence. Any objection?

Mr. Currey: No.

And thereupon Mr. Ewert read Defendant's Exhibit #6 to the court."

And he submitted the same to the department for approval. See Exhibit 6, Rec. pages 348 and 349.

The deed so taken was and is part of the compromise agreement, and Ewert cannot shut out any of these matters connected with his compromise instrument. *McMullen v. Hoffman*, 174 U. S. loc. cit. 657; *Embrey v. Jemison*, 131 U. S. loc. cit. 348, including the pleadings in the case; because these constitute the blazed trail which carries the court back to the original transaction, condemned as violative of public policy. As was said in *McMullen v. Hoffman*, 657:

"Here you cannot stir a step but through that illegal agreement; and it is impossible to enforce it."

As above stated, Ewert, as part of the agreement on which he bases his motion to dismiss this appeal, took from the Indian a deed to this land and presented it to the Department for approval—he used his judgment as a means of inducing the Indian to make him this second deed; the deed is on the form of the Indian Department deeds of incompetent Indians (Rec. 348, 349). His first deed being illegal, his reliance must be on his compromise and the judgment of the Court of Appeals

sustaining it as valid and it is that judgment which we are here endeavoring to have reviewed on a matter of law and conclusions of fact, both of which we contend were erroneous.

The first and only judgment ever rendered on the stipulation was by the Court of Appeals rendered (on the report of Judge Williams) dismissing appellant's appeal—the judgment from which we appealed to this court. The said stipulation has not the force of a judgment, and the right to be heard on our contention that it is utterly void is as sacred as the right to institute the suit in the first instance.

In *U. S. v. Barber*, 219 U. S. 72, defendants plead in abatement or bar and the parties filed stipulations with reference thereto. The court said, pages 77 and 78:

“So far as the claim based upon the stipulation is concerned, it is plainly without merit, since we can only look to the judgment which was actually entered to determine what was decided with respect to the fourth count, and the court in that judgment expressly placed its decision that the United States could not prosecute the defendants upon the plea of the bar of limitations.”

The effect of sustaining this motion and dismissing this appeal, is to leave Mr. Ewert in possession of this Indian's land under a deed made in violation of Sec. 2078, an illegal deed, and the court by its own act defeats the acts of Congress.

The contention is, and must be, either that Ewert took title by the settlement or that the settlement was

a confirmation and ratification of the prior illegal agreement; but as a ratification or confirmation it is void. (*Capell v. Hall*, 7 Wall. 542, 558, 559; *Cont'l Wall Paper Co., v. Sons. Co.*, 212 U. S. 227, 263.) In the last case it is said:

"No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection would be tainted with the vice of the original contract, and void for the same reason. Wherever the contamination reaches it destroys. The principle to be extracted from all cases is, that the law will not lend its support to a claim founded upon its violation."

The Indian was as completely incompetent to make the contract as was Ewert. Both were prohibited from making a contract the law forbids. The Indian's right to prosecute his suit was not alone a private right. It was a right founded on public policy of the United States and the government was concerned that its policy be upheld, not given or contracted away. This court asks the question in *Pope Mfg. Co. v. Gormully*, 144 U. S. 224, 234, whether an action would lie for breach of a contract not to interpose a defense of public policy and answered it in this statement:

"It appears not, and the reason is, that the right to make the defense is not only a private right to the individual, but it is founded on public policy which is promoted by his making the defense, and contravened by his refusal to make it. \* \* \* With regard to all such matters of public policy, it would seem that no man can bind himself by estoppel not to assert a right which the law gives him on reasons of public policy."

We suggest to the court that if this motion is granted the appellant will be deprived of his legal right to have the judgment of the trial court reviewed holding that appellee is the rightful owner of this land and the Circuit Court of Appeals holding in a companion case, *Bluejacket v. Ewert*, that the trial court judgment was erroneous and that Ewert's deed was void. Ewert then obtains title to this restricted Indian land by a stipulation of dismissal *with prejudice* which forever bars a new action; obtains, as part of the compromise, a new deed while the land is restricted from sale, and all contrary to and violative of Acts of Congress pertaining to sale of said lands and the conduct of its officers.

This cannot be legally done.

The Supreme Court of Oklahoma beginning with *Bell v. Fitzpatrick*, 157 Pac. 334, 53 Okla. 574, and large number of cases following, condemn such a proposition.

In *Bell v. Fitzpatrick*, *supra*, the court said:

"The effect which counsel seek to give the purported orders of dismissal is to divest the title of plaintiff in and to the lands in question and reinvest it in defendant. While they say that it amounts to a judgment quieting title, this is another way of saying the void deed is given validity and effectiveness in this indirect way when such deed is an absolute nullity. \* \* \* Neither can defendant by any device or scheme acquire that title in violation of the public policy of the United States, as expressed in the various Acts of Congress affecting matters of this character."

See also :

*Brown v. Anderson*, 160 Pac. 724.

*Jefferson v. Gallagher*, 150 Pac. 1071.

also,

*Goodrum v. Buffalo*, 162 Fed. 817.

It is so here. To give effect to the deed or stipulation is in effect removal of the restrictions imposed by Congress and depriving the Indian of his right to enjoy his land guaranteed by the Federal Government.

In *Goodrum v. Buffalo*, *supra*, the Eighth Circuit Court of Appeals in a case involving similar questions and also a Quapaw Indian, said :

"It should be understood, once for all, that no scheme or device, however ingenious or plausible, concocted by any person, can avail to divest the Indian of the title to their allotted lands within the period of limitation prescribed by Congress."

Contracts against public policy are not enforced or recognized by the courts because of the paramount interest of the public. The compromise settlement here as construed by the Court of Appeals ignores the public interest and is therefore a nullity.

"Private parties may settle their controversies at any time, and rights which a plaintiff may have had at the time of the commencement of the action may terminate before judgment is obtained or while the case is on appeal, and in any such case the court, being informed of the facts, will proceed no further in the action. Here, however, there has been no extinguishment of the rights (whatever they are) of the public, the enforcement of which the Government has endeavored to procure by a judg-

ment of a court under the provisions of the act of Congress above cited. The defendants cannot foreclose those rights nor prevent the assertion thereof by the Government as a substantial trustee for the public under the act of Congress, by any such action as has been taken in this case. By designating the agreement in question as illegal and the alleged combination as an unlawful one, we simply mean to say that such is the character of the agreement as claimed by the Government. That question the Government has the right to bring before the court and obtain its judgment thereon. Whether the agreement is of that character is the question herein to be decided."

*U. S. v. Freight Association*, 166 U. S. 309.

Also:

*Northern Pac. R. R. v. Ter. of Washington*,  
142 U. S. 492, 509.

*U. S. v. Allen*, 179 Fed. 13-17.

In *Heckman v. United States*, 224 U. S. 413, at page 437, it is stated:

"While relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States."

It is admitted that the Court of Appeals in *Blue-jacket v. Ewert*, 265 Fed. 823, held Ewert's deed and act was unlawful and void. Then the Redeagle deed was void, the land is still restricted in the hands of the Indian, but because the old incompetent full blood Indian signed the stipulation for dismissal, his heirs are forever barred from having the erroneous judgment reviewed and the title has been reinvested in Ewert in direct violation of law.

**Conclusion.**

The judgment appealed from is final because it effectively terminated the controversy and forever barred appellant from instituting suit; it is erroneous because the court in effect held that a void and prohibited act may be settled and compromised giving effect to the original unlawful act and further because the restricted Indian has been divested of his restricted land by a scheme contrary to the policy of the United States.

Respectfully submitted,

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# **CARD 8**

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Syllabus.

## KENDALL, ADMINISTRATOR OF REDEAGLE, ET AL. v. EWERT.

## APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 157. Argued March 13, 1922.—Decided May 15, 1922.

1. A deed made by an Indian to one who took it as agent for another employed at the time as a special assistant to the Attorney General in suits to set aside Indian conveyances, *held* void, under Rev. Stats., § 2078, following *Ewert v. Bluejacket*, *ante*, 129. P. 141.
2. Upon an appeal from a decree of the Circuit Court of Appeals, dismissing an appeal from the District Court upon the ground that the parties had entered into a valid stipulation for the final dismissal of the suit, this court, finding the stipulation invalid, may dispose of the entire cause as justice may require. P. 142.
3. The inference of incapacity for business arising from the fact that a man is generally regarded in his community as a common drunkard can only be overcome by clear evidence of his ability on the particular occasion, when a transaction in which he was plainly overreached is in question. P. 146.
4. *Held*, upon the evidence, that a stipulation to dismiss this suit, and a quit-claim deed, both affecting valuable property rights of an Indian, were executed by him when incompetent, due to his addiction to drink, and should be set aside. P. 148.
5. An Indian's deed of his restricted allotment which is invalid because of his mental incompetency when he made it is not validated by its subsequent approval by the Assistant Secretary of the Interior, presumably given without knowledge of the Indian's condition when the deed was executed. P. 148.
6. The equitable doctrine of relation is not applied to sustain an inequitable title. P. 148.
7. Rents and royalties accrued from a restricted allotment of land made to an Indian are personal property passing to his administrator upon his death for payment of taxes and charges of administration and for distribution under the state law, when no act of Congress controls. P. 149.
8. A suit begun by an Indian allottee to set aside a conveyance of his allotment and for an accounting of rents and royalties, may be revived after his death and maintained by his administrator in respect of the rents and royalties and the costs and expenses of

the litigation, after the land has been duly conveyed to the defendant by the allottee's heirs. P. 149.

9. Where conveyances were set aside because of the grantor's incompetency, *held* that the grantee must give indemnification for a mortgage by which he had encumbered the title in the interim, if it remained a subsisting lien. P. 150.

264 Fed. 1021, reversed.

APPEAL from a decree of the Circuit Court of Appeals dismissing an appeal from a decree of the District Court which dismissed a bill seeking to hold the appellee as trustee for the original plaintiff, Redeagle, in respect of an Indian allotment of mining land, and of rents and royalties derived from it. The dismissal in the court below was based on a stipulation made by Redeagle with the appellee that the suit should be dismissed with prejudice, which the court below upheld against the contention that Redeagle, being a drunkard, was without capacity to make it.

*Mr. Arthur S. Thompson* for appellants.

*Mr. Paul A. Ewert* pro se. *Mr. Henry C. Lewis* and *Mr. William R. Andrews* were also on the brief.

MR. JUSTICE CLARKE delivered the opinion of the court.

This is an appeal from a decree of the Circuit Court of Appeals, dismissing an appeal from a decree by the District Court which dismissed the petition, in a suit in which it was prayed that appellee, Paul A. Ewert, should be decreed to hold in trust for George Redeagle the title to 100 acres of restricted and very valuable Indian lands, which Redeagle, a full-blood Quapaw Indian, had, in form, deeded, in 1909, to Franklin M. Smith, who, a year later, conveyed the same to Ewert. It was alleged that Smith in bidding upon the land acted as the agent of Ewert who, it was averred, was legally incapable of purchasing it because he was employed at the time by the Government in Indian affairs.

Ewert is the same person who was appellant and appellee in Nos. 173 and 186, respectively (the *Bluejacket Case*), this day decided, *ante*, 129, and the validity of the deed in this case is assailed, as was the one involved in those appeals, on the ground that Ewert was not competent to make such a purchase under Rev. Stats., § 2078, which reads:

“No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; any person offending herein, shall be liable to a penalty of five thousand dollars, and shall be removed from his office.”

The facts in the two cases are very similar, except that in this case the evidence is clear that, regarding himself as prohibited from making the purchase and desiring to conceal his relation to it, Ewert procured Smith to bid on the land, to take the deed for it in his own name and then, a year later, to deed it to him. The deed to Smith was for the consideration of \$1,300 but the quit-claim deed from Smith to Ewert was for the recited consideration of \$2,000. Ewert admitted in his answer that he purchased the land through Smith, as his agent, but when pressed for a reason for the difference in the considerations, his reply was evasive and indefinite. The restriction on the land expressed in the patent and required by 28 Stat. 907, did not expire until September 26, 1921.

Here as in the other case Ewert, appointed Special Assistant to the Attorney General in October, 1908, “to assist in the institution and prosecution of suits to set aside deeds to certain allotments in the Quapaw Indian Agency,” is found in the following February bidding upon and purchasing this Quapaw Indian land.

In the *Bluejacket Case* we have held that, assuming the sale to have been made in the public manner required by the rules of the department, all required action to have been, in form, properly taken, and the deed therein to

have been approved by the Secretary of the Interior, nevertheless it was void because Ewert was prohibited by Rev. Stats., § 2078, from then becoming the purchaser of such Indian lands, and the construction therein given to the statute must rule this case and render void the deeds herein relied upon to give him title.

But this case presents several additional features.

After the District Court decided in favor of Ewert and dismissed the petition, he paid \$700, on July 5, 1918, to procure from Redeagle, a stipulation to dismiss the action *with* prejudice, and for the same consideration and at the same time took from him a quit-claim deed for the land. Before hearing on appeal, by Redeagle, in the Circuit Court of Appeals, Ewert filed a motion to dismiss the appeal, based on this stipulation to dismiss the case, and the appellant, in turn, moved the court to cancel the stipulation and strike it from the files because, as he averred, it was procured by fraud and without notice to his counsel.

When these motions to dismiss were presented to the Circuit Court of Appeals that court ordered that "this cause be . . . referred back to the District Court . . . with directions to investigate the circumstances of the stipulation for dismissal of the suit . . . and to report to this court its findings and evidence whether in fact and law said stipulation is a final settlement of the case. This cause and the motion to dismiss will stand continued in this court pending the receipt of the report from said District Court."

Both the Circuit Court of Appeals and the District Judge treated this order as one of reference, merely, to the District Judge (not to the District Court), to take testimony and report his findings of fact as to the validity of the stipulation, and pursuant thereto the District Judge took testimony and transmitted the same to the Circuit Court of Appeals with his finding that the stipulation was a final settlement of the issues involved in the case, and

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thereafter that court dismissed the appeal, reciting in its decree that its conclusion was based on the finding of the District Judge, and upon the reading and consideration of the evidence on which that finding was based.

While the appeal to this court is thus only from this decree of dismissal by the Circuit Court of Appeals, it is plain that, if given effect, that decree would make an end of the entire controversy and would confirm title in Ewert to restricted Indian lands such as we have held in the *Bluejacket Case* he was not competent to acquire, and it therefore is a final decree the appeal from which brings not only the validity of the stipulation for dismissal but the entire cause here for such disposition as the justice of the case may require. Rev. Stats., § 701. *Ballew v. United States*, 160 U. S. 187, 199, 200; *Chappell v. United States*, 160 U. S. 499, 509; *Camp v. Gress*, 250 U. S. 308, 318; *Cole v. Ralph*, 252 U. S. 286, 290.

On the reference by the Circuit Court of Appeals to the District Judge various letters by Ewert to Redeagle were introduced which are of great significance.

The decree dismissing the petition was not entered by the District Court until March 4, 1918, but two months before that, on January 3, 1918, Ewert wrote to his adversary, Redeagle, sending a copy "of the opinion rendered by the court" (which was really only a short letter by the judge to counsel stating that the case would be dismissed and directing that a decree be drawn) saying that he did so thinking that perhaps his, Redeagle's, counsel might keep him in ignorance of the holding that "you have no case."

On July 1, 1918, Ewert wrote Redeagle: that the decree of the District Court had not been appealed from; that the time for appeal, if not already past, soon would be (although two months remained for appeal); and that he wished him to "thoroughly understand his rights." And then, showing that he had been in treaty for settlement

with him, he adds: if you sign the stipulation for dismissal "that ends the case forever" and I am paying you this \$700 with the distinct understanding that it does "end the case forever," and he suggests that in order that it may do him some good, Redeagle should deposit the money in a bank. He adds: "If you cash it and get all the money, you probably will get drunk and lose it and then you will come back and say that somebody has been trying to cheat you. . . . I have instructed my clerk that under no circumstances should she have any dealings with you when you are intoxicated. I just now met you down in the lobby of this building in an intoxicated condition and you wanted to come to the office and I told you that I would have nothing to do with you while you were intoxicated. I have advised my clerk to the same effect, and if you are intoxicated when you come into this office I want you to state it, *if it can not be observed*; if you have been drinking any when you come into the office *I want you to tell my clerk that fact* and she will have no business relations with you."

On the next day, July 2, 1918, Ewert again writes Redeagle, that he had met him in the corridor on the day before, that when he, Redeagle, wished to talk settlement of the case, he told him he would not talk business with him when he had been drinking. He tells him that he is leaving home to be gone six weeks, and that he has left a check for \$700 in his office with proper papers for him to sign if he will come to the office "sober and in your right mind." He again suggested that "instead of having this check cashed and getting drunk and losing the money" he should deposit the money in some bank for "in that way you won't be liable to lose the money." He concludes the letter by urging Redeagle to come to his office at an early day, that he bring with him whomsoever he pleases, if they are reliable and "sober" persons, that he will not settle this case with his attorneys and that he must make settlement soon or the offer would be withdrawn.

Three days later, on July 5th, Redeagle went to Ewert's office with a neighbor and there executed the stipulation for dismissal, and also a quit-claim deed for the land, and received \$700. He paid the neighbor \$100 for taking him to Ewert's office, put \$50 in his pocket, left the balance on deposit in the bank and proceeded to go upon a protracted spree.

The clerk who delivered the check and the two witnesses to the paper say that Redeagle appeared to be sober when he executed them and to fully understand what he was doing; indeed the clerk says, "I should say he was more sober that morning than I had ever seen him."

A number of witnesses were heard by the District Judge. Several said that Redeagle had had some education in his youth, but that he had been drinking heavily for many years and had become so incapable of transacting business that they refused to have business relations with him. Others testified that when sober he was competent to do business.

The District Judge announced that he adopted as the basis of his finding of fact the evidence of the Indian agent who had testified. Among other things, this agent said that while he did not think Redeagle mentally weak "he was a drunkard." "He was like all drunkards, he wasn't fit to do business when drunk." He said when he was sober, he knew what he was doing but he had been drinking a number of years and it was injuring him; that he was improvident but "I don't think just because he was a drunkard he ought to be protected."

The District Court, in stating the effect of the evidence, said: "I am inclined to adopt the evidence of the Indian agent that he was an intelligent Quapaw Indian, but that he was profligate and dissipated and that he finally became a drunkard, and that he was such during the year 1918. Now as to the legal effect of that, I will let you brief that."



The neighbor who went with Redeagle to Ewert's office to execute the stipulation testified that Redeagle came to him the day before and offered him \$50 to take him in his automobile to Ewert's office, a distance of twenty miles, that he declined, but finally agreed to take him for \$100, which was paid him from the \$700 received on settlement. On this and much other evidence the District Judge found that Redeagle was sober when he signed the stipulation for dismissal, that he knew its purpose and effect, and should be held bound by its terms, and the Circuit Court of Appeals concurred in this conclusion.

Without further discussion of the evidence, it is sufficient to say that, while the witnesses differ as to whether Redeagle had deteriorated to the point of being incompetent to do business when temporarily sober, they all agree, and the District Judge agrees with them, that long before the stipulation for dismissal was signed, he had come to be generally regarded as a common, an habitual, drunkard, and we think the Circuit Court of Appeals failed to give the weight to this fact which it deserves.

That habitual drunkards are not competent to properly transact business is so widely recognized in the law that in many States statutes provide for placing them under a guardian or committee, with authority to put restraint upon them and to preserve their property, not less for themselves than for those dependent upon them. A typical statute makes "All laws relating to guardians for lunatics, idiots and imbeciles, and their wards . . . applicable to the guardians" for drunkards. (Ohio General Code, § 11011.)

The extent to which one must have fallen below the standard of ordinary business capacity before he will be generally recognized in a community as a common drunkard is so notorious that we do not hesitate to say that evidence of competency entirely clear should be required to sustain a transaction in which such a person has

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plainly, as in this case, been overreached by a person dealing with him who is competent and aggressive. Men so reduced will sacrifice their property, as they have sacrificed themselves, to the craving for strong drink; and Ewert's letters show that he knew perfectly well that the Indian with whom he was dealing had reached that unfortunate stage of decay. They show him refusing to have business dealings with Redeagle three days before the paper was signed because he had been drinking, but that at the same time he was eager to obtain from him a stipulation to dismiss the case, if only he could secure it under circumstances such that he could make plausible proof that he was temporarily sober. His letters, impressing upon Redeagle that his case was lost, that his lawyers were untrustworthy, and intimating that they had deserted him, joined with repeated offers of a sum of money sufficient to enable him to gratify, as he must have thought for a long time to come, the craving which had mastered him, if he would only sign away claims which he was repeatedly assured were valueless, could not possibly have been more cunningly devised than they were to constitute an irresistible temptation to such a demoralized inebriate.

But whatever doubt we might otherwise have had as to the correctness of the conclusion of the Circuit Court of Appeals is removed by evidence which was not before that court and which is presented to and urged upon our attention by Ewert himself in support of a motion to dismiss on the ground that the case had been settled after the appeal was taken. Redeagle died in November, 1918, and this evidence, which we may consider (*Dakota County v. Glidden*, 113 U. S. 222; *Elwell v. Fosdick*, 134 U. S. 500, 513; *Gulf, Colorado & Santa Fe Ry. Co. v. Dennis*, 224 U. S. 503, 508) consists of three quit-claim deeds from his children for their interest, in the land in controversy and in the royalties for minerals mined there-

from. For each of these three deeds Ewert paid \$6,000 in November and December, 1921. The difference between the \$700 accepted by Redeagle and the \$18,000 paid for the same property to his presumably competent heirs is most persuasive evidence of the condition of incapacity of Redeagle at the time the stipulation was obtained from him, even though he may have been temporarily sober when he signed the paper.

Upon a full review of the evidence as it is now before us, we do not hesitate to conclude that Redeagle was not competent to contract as, in form, he did in the stipulation to dismiss and that it must, therefore, be decreed to be void, notwithstanding the fact that at the time Ewert was not in the employ of the Government.

But, it is argued, the quit-claim deed for the land executed at the same time as this stipulation, on July 5, 1918, was approved by the Assistant Secretary of the Interior on January 27, 1922, as appears by the copy filed with the clerk of this court, and that the doctrine of relation makes this deed effective from its date.

Of this it would be enough to say that Redeagle was no more competent to make this deed than he was to make the stipulation which we have just held to be void, but we may add that the doctrine of relation is a legal fiction, resorted to for the purpose of accomplishing justice, "to prevent a just and equitable title from being interrupted by claims which have no foundation in equity." *Lykins v. McGrath*, 184 U. S. 169, 171; *Pickering v. Lomax*, 145 U. S. 310; *Lomax v. Pickering*, 173 U. S. 26; *Peyton v. Desmond*, 129 Fed. 1, 11. Obviously such a doctrine cannot be resorted to to give validity to a deed obtained under conditions such as we are considering,—it cannot take root in such a soil. We cannot know what disclosure of the conditions under which it was executed was made to the Department when the deed was approved, but we do not doubt that if a full disclosure had been made approval

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would not have been given, and the deed must be decreed to be void.

After Redeagle died in November, 1918, this suit, revived in the names of the administrator of his estate and of his three heirs, was prosecuted to the decree of dismissal in the Circuit Court of Appeals in June, 1920, and the appeal to this court was allowed in August of that year. More than two years later, in 1922, a motion to dismiss the appeal was filed, based on the claimed settlement with the three heirs to which reference has been made in this opinion, and it is now contended that this appeal should be dismissed for the reason that there is no party remaining competent to prosecute it in this court.

It is argued that the land involved continued under restriction until September 26, 1921, that neither it nor the royalties issuing therefrom could be encumbered until that date, and that both passed to the heirs so freed from charges of any kind that there was no property or estate for an administrator to administer and no function for him to perform.

With this we cannot agree.

The petition in the case prayed for recovery of the land and also for an accounting for rents and profits. That Redeagle or his heirs could institute such a suit is not disputed and to maintain it he must employ counsel and create court costs which should be paid. The record shows that large sums in royalties for zinc and lead ores mined from the lands involved had been paid to Ewert, and these when accrued were clearly personal property (*United States v. Noble*, 237 U. S. 74, 80), which, on the death of Redeagle, would pass to his administrator for purposes of paying any inheritance or other taxes which might be properly chargeable against it, and for other administration charges and for distribution. There being no congressional legislation providing for the administration of such intestate property, the state law is applicable

and we think the administrator is a competent party to assert the right of the estate, whatever it may be, to rents or royalties derived from the land during Redeagle's lifetime. If Ewert has succeeded to the rights of the heirs he will, of course, receive their distributive shares.

It is alleged in the petition, and not denied, that Ewert encumbered the lands involved with a mortgage, and against this indemnification is prayed for, which should be granted if it continues a subsisting lien.

It results that the decree of the Circuit Court of Appeals must be reversed and the cause remanded to the District Court with directions to enter a decree: canceling the deeds, of Redeagle to Smith of March 10, 1909, of Smith to Ewert, dated April 23, 1910, and of Redeagle to Ewert, dated July 5, 1918; providing for an accounting for rents and profits and royalties, and for indemnification from any subsisting lien of any mortgage by Ewert upon the land; and for further proceedings in conformity with this opinion.

*Reversed and remanded.*

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